

# WHO IS ANDREA YATES? A SHORT STORY ABOUT INSANITY

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## INTRODUCTION

We all know by now the story of Andrea Yates. Or, at least we think we do. Andrea Yates, high school valedictorian, swim team champion, college graduate, and registered nurse married Russell (“Rusty”) Yates in 1993 after a four-year courtship. Both were twenty-eight.<sup>1</sup> Over the next seven years, Andrea<sup>2</sup>

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1. See generally SUZY SPENCER, *BREAKING POINT* (2002) (providing a journalist’s detailed account of Andrea’s life, marriage, and competency hearing based upon courtroom observations as well as many hours of interviews with Rusty and key players in the Yates case); Timothy Roche, *The Yates Odyssey*, TIME, Jan. 28, 2002, at 44 (offering one of the most thorough descriptions available of Andrea’s life and mental breakdown based on forty hours of conversation with Rusty, interviews with Andrea’s family and friends, an examination of the Yates family home videos, and a study of “thousands of medical records, police files, autopsy reports and court documents”). For a sampling of recent commentaries discussing the Andrea Yates case in the context of a wide range of subjects, including the law and literature on postpartum psychosis, see Catherine Albiston et al., *Feminism in Relation*, 17 WIS. WOMEN’S L.J. 1, 14-15 (2002) (reviewing Michelle Oberman’s analysis of Andrea’s intense “maternal isolation” and the reasons for Andrea’s narrow perception of the options available to her); Elizabeth T. Bangs, *Disgust and the Drownings in Texas: The Law Must Tackle Emotion When Women Kill Their Children*, 12 UCLA WOMEN’S L.J. 87, 87 (2001) (reviewing THE PASSIONS OF LAW (Susan A. Bandes ed., 1999) (analyzing the importance of emotion in how both the law and society responded to the Yates case and emphasizing “that the more appropriate emotional response for the legal system is compassion rather than disgust” in cases involving maternal infanticide)); Joan W. Howarth, *Executing White Masculinities: Learning From Karla Faye Tucker*, 81 OR. L. REV. 183, 218-19 (2002) (noting the significance of gender when comparing the Karla Faye Tucker death penalty case with the Andrea Yates case); Michele Connell, Note, *The Postpartum Psychosis Defense and Feminism: More or Less Justice for Women?*, 53 CASE W. RES. L. REV. 143, 145 (2002) (contending, in light of the Yates case, “that a legislative solution creating a separate postpartum defense is the only way to arrive at equal justice for mothers who commit filicide while suffering from postpartum psychosis”); Connie Huang, Note, *It’s A Hormonal Thing: Premenstrual Syndrome and Postpartum Psychosis As Criminal Defenses*, 11 S. CAL. REV. L. & WOMEN’S STUD. 345, 345 (2002) (examining a range of female hormonal defenses and suggesting that postpartum depression and psychosis “should be allowed as a type of insanity defense, but not as a separate defense”); Sandy Meng Shan Liu, Comment, *Postpar-*

gave birth to five children and suffered one miscarriage, all the while plunging deeper into mental illness.<sup>3</sup> Then on June 20, 2001, in less than an hour, Andrea drowned all of her children in the bathtub, one by one.<sup>4</sup> Months later, she was convicted of capital murder in Harris County, Texas,<sup>5</sup> where she now serves a life sentence.<sup>6</sup>

Some may think that a mentally ill mother who committed such an act should be judged insane. Yet, news accounts and court records suggest that Andrea impaired her attorneys' efforts to plead insanity.<sup>7</sup> Such defense plans were already encumbered by the unusually strict Texas insanity standard<sup>8</sup> and the state's renowned retributive culture.<sup>9</sup> After a jury found Andrea competent to stand trial,<sup>10</sup> she resented the efforts that her attorneys mounted on her behalf<sup>11</sup> even as she faced possible execution.<sup>12</sup> Andrea insisted there was nothing wrong with her mind<sup>13</sup> and that she deserved to die.<sup>14</sup> She seemed to be awaiting punishment for her sins.

To those closest to Andrea, this self-blaming reaction came as no surprise. They could testify that Andrea had been tormented by bouts of mental illness,<sup>15</sup>

*tum Psychosis: A Legitimate Defense for Negating Criminal Responsibility?*, 4 SCHOLAR 339, 349 (2002) (providing a thorough overview of the law and literature on insanity and postpartum psychosis and suggesting, in light of the Yates case, changes to the burden of proof in the defense of postpartum psychosis "or considering such a defense as a mitigating factor at sentencing, if not both").

2. For purposes of clarity, this Article generally calls the eight members of the Yates family by their first names only (Andrea, Russell ("Rusty"), Russell's mother (Dora), and the five children).

3. See *infra* Appendix 1 at 61: Timeline of Andrea Yates's Life and Trial: April 1993-April 2002 [hereinafter App. 1] (chronicling critical dates and details concerning Andrea's problems with mental illness).

4. See *id.* (June 20, 2001) at 70.

5. See *id.* (Mar. 12, 2002) at 74.

6. See *id.* (Mar. 18, 2002) at 75.

7. Associated Press, *Yates' Fate Hinges on Doctors' Words*, Feb. 25, 2002, available at [http://www.courttv.com/trials/yates/022502\\_ap.html](http://www.courttv.com/trials/yates/022502_ap.html) (noting Andrea's declaration that she "deserve[d] to be punished" due to her self-proclaimed guilt as one manifestation of what Andrea's attorneys referred to as her "self-defeating attitude" resulting from her "severe mental illness").

8. See Christopher L. Tritico, *Real Culprit in Yates Case Is the System*, 18 TEX. LAW. 39, 39 (Apr. 1, 2002); *infra* Part II.B. The Texas Insanity Standard.

9. See, e.g., *infra* notes 180, 511 and accompanying text. For an excellent overview of the literature on the subculture of violence inherent in the South and how it relates to the use of the death penalty, see Carol S. Steiker, *Capital Punishment and American Exceptionalism*, 81 OR. L. REV. 97 (2002); see also ANTHONY G. AMSTERDAM & JEROME BRUNER, *MINDING THE LAW* 217-45 (2000) (providing a pointed discussion of how "culture" affects cases).

10. See App. 1 (Sept. 22, 2001) at 72. For a summary of the psychiatric testimony at Andrea's competency hearing and other expertise regarding competency in cases of postpartum psychosis, see *infra* Part VI.D., Andrea Yates's Competency, and accompanying notes.

11. See *infra* Part VI.D., Andrea Yates's Competency.

12. See *infra* note 479 and accompanying text; see also *infra* notes 74-79, 513-14 and accompanying text (noting the high rate of executions in the South generally as well as Texas and Harris County more specifically) and notes 430, 528-33 and accompanying text (discussing Andrea's desire to be executed).

13. See *infra* notes 523-33 and accompanying text.

14. See *infra* notes 26, 38, 429-31 and accompanying text.

15. See App. 1 (June 17, 1999; July 2-19, 1999; Mar. 31, 2001) at 62-63, 67-68.

and, in fact, both the prosecution and defense agreed that she was mentally ill.<sup>16</sup> Andrea's life was also distinguished by religious obsession and a steadfast devotion to tales of sin and Scripture,<sup>17</sup> a "repent-or-burn zeal"<sup>18</sup> that led her to believe she was a bad mother with ruined offspring.<sup>19</sup> According to Andrea, she killed her children to save them from Satan and her own evil maternal influences,<sup>20</sup> delusions that did little to help Andrea's defense because they fueled her own desire for punishment.

Public opinion on the Yates killings helps explain some of the more contradictory themes in the case. On the one hand, the public had much sympathy for Andrea and the life that she led.<sup>21</sup> Yet, her composed behavior on the day she killed her children stirred a strong retributive response.<sup>22</sup> Many were unable to comprehend such violence except by declaring it intentional and evil.<sup>23</sup> According to this view, it could be said that Andrea was supremely sane—her acts rational and premeditated<sup>24</sup>—despite her unquestioned history of postpartum psychosis.<sup>25</sup> Andrea propelled this account, spurring the public, her "jury," to see her as the Satanic mother she believed herself to be.<sup>26</sup>

16. See Tritico, *supra* note 8, at 39 ("Everyone agreed that Yates suffers from a mental illness. In her punishment phase final argument, prosecutor Kaylyn[n] Williford called it a 'severe mental defect.'").

17. See *infra* notes 240, 290-97 and accompanying text.

18. Roche, *supra* note 1, at 48.

19. See *infra* notes 296, 380-82 and accompanying text.

20. *Trial of Texas Mother Begins Third Week*, CNN.COM, Mar. 4, 2002, available at [http://www.courttv.com/trials/yates/030402\\_cnn.html](http://www.courttv.com/trials/yates/030402_cnn.html) (quoting the defense expert witness's opinion that Andrea believed herself to be Satan, and thought that by drowning her children she was saving them from hell); see App. 1 (Mar. 1, 2002) at 73.

21. See SPENCER, *supra* note 1, at 147-48, 215-16; Liu, *supra* note 1, at 345; Janelle Brown, *Swift Injustice*, SALON.COM, Mar. 13, 2002, at [http://archive.salon.com/mwt/feature/2002/03/13/yates\\_reacts/](http://archive.salon.com/mwt/feature/2002/03/13/yates_reacts/); Associated Press, *Groups Support Mother Who Drowned Children, Other Women Suffering Postpartum Depression*, Aug. 27, 2001, available at [http://www.courttv.com/archive/news/2001/0827/yates\\_ap.html](http://www.courttv.com/archive/news/2001/0827/yates_ap.html).

22. See Liu, *supra* note 1, at 345 (citing news accounts of the Yates case indicating that some viewed "postpartum psychosis as a contemptible excuse" engineered to evade criminal responsibility).

23. See *id.* at 377.

24. See Sherry F. Colb, *The Andrea Yates Verdict: A Nation in Denial About Mental Illness*, FINDLAW'S WRIT, Mar. 27, 2002, at <http://writ.news.findlaw.com/colb/20020327.html> (noting that many people doubted Andrea Yates was insane when she killed her children because she "planned her actions carefully" before the killings, her actions "seemed efficient and unrelenting" at the time of the killings, she appeared composed and rational after the killings, and she understood that she had killed her children and that the act was unlawful).

25. See Gerald E. Harris, *Psychological Report on Competency Status* (Aug. 30, 2001) (on file with author) (stating that Andrea's "family history is positive for mental illness, with her father and two siblings reportedly having significant mental disorders," and that Andrea "also has a personal history of significant mental problems, including severe postpartum depression, psychotic episodes and suicide attempts"); App. 1 (June 16-18, 1999; Mar. 13-30, 2001) (detailing episodes of Andrea's postpartum depression and postpartum psychosis) at 62, 67.

26. Roche, *supra* note 1, at 50 (reporting that after Andrea's arrest, she described the killing of her children as "a mother's final act of mercy" and told doctors that "[o]nly her execution would rescue her from the evil inside her"); see also Associated Press, *Yates Claimed She Killed Kids to Keep Them from Going to Hell*, Mar. 1, 2002, available at [http://www.courttv.com/trials/yates/030102\\_pm.html](http://www.courttv.com/trials/yates/030102_pm.html)

These complex and conflicting aspects of the Yates case fed into the prosecution's depiction of Andrea's mental state on the day she killed her children. But, one psychiatrist's testimony seemed to have a greater impact than the others on the case's outcome.<sup>27</sup> The prosecution's star expert, Park Dietz,<sup>28</sup> appeared particularly adept at persuading the jury to accept the prosecution's assertion that Andrea was sane and acting intentionally when she killed her children.<sup>29</sup> Because the Yates case is on appeal, many of the court records are not available.<sup>30</sup> In addition, the defense team still lacks funds to pay for the entire trial transcript<sup>31</sup> so it too cannot be examined. Park Dietz's testimony, however, is now accessible<sup>32</sup> and it warrants a thorough analysis in its own right.

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(stating that Andrea "said she believed that if she killed her children, the state would execute her, Satan would be eliminated from the world and the children would be saved").

27. This Article focuses primarily on Dr. Park Dietz as an expert witness, since his testimony is considered to have been most significant to the outcome of the case. See *infra* notes 148-49, 153 and accompanying text. However, the testimony of other expert witnesses for the prosecution, such as Dr. Harry Wilson (a pediatric pathologist who testified that four of the children were alive but unconscious when Andrea removed them from the bathtub and placed them on the bed), also influenced jurors. See Alan Bernstein & Leigh Hopper, *Acquittal Not Equal to Free for the Insane*, HOUS. CHRON., Mar. 13, 2002, at A29; see also Terri Langford, *Juror: Yates Betrayed by Calm*, DALLAS MORNING NEWS, Mar. 18, 2002, at 1A.

28. See *infra* Appendix 4 at 97: Portions of Prosecuting Psychiatrist Park Dietz's Testimony in the Andrea Yates Trial [hereinafter App. 4].

29. See App. 1 (Mar. 7, 2002) at 74.

30. See Telephone Interview with Scott Durfee, General Counsel, Harris County, Tex. District Attorney's Office (Sept. 5, 2001) (explaining the limits on his office for releasing briefs and other information because the Yates case is on appeal). Because the entire trial transcript is not available for the Yates case, see *infra* note 31 and accompanying text, this Article must rely on news reports and popular literature to acquire factual information. This method of relying on media accounts to analyze trials has a long history. See MURDER MOST FOUL AND OTHER GREAT CRIME STORIES FROM THE WORLD PRESS 1 (Rob Warden & Martha Groves eds., 1980) (providing a collection of forty-seven crime stories covering 189 years (from 1788 to 1977) because not only is "[c]rime . . . a staple of the newspaper business," most significantly, "it is also history" and records the social and cultural reactions to law breaking across different eras).

31. Brenda Sapino Jeffreys, *State of Mind*, 18 TEX. LAW. 36, 36 (Dec. 23, 2002) (noting that Andrea's attorney, George Parnham, "wants to appeal the verdict, but the defense team hasn't been able to come up with all of the money to pay for a transcript of the trial"); see also *Paying for Yates*, 17 TEX. LAW. 3, 3 (June 10, 2002) (explaining that "[o]ne of the challenges of appealing the Andrea Yates verdict has been securing a transcript of the entire trial—expected to total about 12,000 pages and cost approximately \$50,000—which Yates' defense attorney . . . says will take the court reporter four or five months to transcribe"). Although George Parnham, Andrea's attorney, had asked for a hearing to establish Andrea's indigent status so that she could acquire a free copy of the transcript, he subsequently withdrew this request after entering an agreement with the court reporter and a financial donor. Carol Christian, *Yates Accord Set: Lawyer Drops Indigent Request*, HOUS. CHRON., May 31, 2002, at A38. According to Parnham, "I did not want to put [Andrea], quite frankly, through the rigors of being placed on the witness stand. . . . She is ill, and she is sad, and we have found a way to pay for the transcript." *Paying for Yates*, *supra*, at 3.

32. See generally App. 4. Fordham University School of Law purchased the entire transcript of Park Dietz's testimony (which is on file with the author), for \$307.50. At least initially, each page of a transcript cost \$4.00. See Carol Christian, *Yates Won't Seek A New Trial*, HOUS. CHRON., Apr. 18, 2002, at A25. For an intriguing historical account of the value of using transcripts in examining criminal cases, see Caleb Crain, *In Search of Lost Crime: Bloated Bodies, Bigamous Love, and Other Literary Pleasures of the 19th Century Trial Transcript*, LEGAL AFF., July/Aug. 2002, at 28-33.

What is most striking about Dietz's testimony is how his opinions about Andrea's mental state could carry so much authority with the jury. Criminal trials commonly involve different sides presenting competing legal "stories" about their version of the facts.<sup>33</sup> The law's role is to ensure that just verdicts result from these conflicting representations. Courts must be perceived "as fair and disinterested, capable of rising above the self-serving and adversarial narratives by which cases are presented."<sup>34</sup> While the law provides evidentiary standards and procedures to oversee what information is released in court and how,<sup>35</sup> an immense amount of discretion exists nonetheless in the ways stories can be told. It remains unclear who is to police these narratives—beyond the structures already in place—or whether such oversight is even needed.

In the Yates case, the defense claimed that Andrea's mental illness caused her to believe that killing her children was the right course of action. Although Andrea's attorneys called a number of experts to prove their argument, each expert had a different twist on this central viewpoint.<sup>36</sup> Therefore, the defense's story about Andrea, while emphasizing her insanity, was still somewhat muddled. In contrast, the prosecution's story about Andrea's sanity was clearer and also apparently consistent with the cultural norms of Harris County, Texas. The prosecution argued that Andrea may have been gripped by her belief in some demonic command, but she was still fully capable of knowing she was doing something wrong.<sup>37</sup> And Andrea seemed to concur, damningly perhaps. Her story was congruent with the prosecution's. She had sinned and deserved punishment for acting out the devil's dictates.<sup>38</sup> In all likelihood, however, Andrea's own story was indicative of her mental illness,<sup>39</sup> not evidence of the disposition she felt she most deserved. Nonetheless, both her narrative and the prosecution's were accentuated by courtroom storyteller, Park Dietz.

This Article analyzes the problematic aspects of Dietz's testimony in an effort to contribute some balance to the Andrea Yates story. While Dietz's comments may have confirmed the Harris County jury's preconceptions, they were virtually unsubstantiated. Dietz also has no significant expertise in postpartum

33. See AMSTERDAM & BRUNER, *supra* note 9, at 110 (explaining that "the law is awash in storytelling"); see also LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW 2 (Peter Brooks & Paul Gewirtz eds., 1996) (examining law "not as rules and policies but as stories, explanations, performances, linguistic exchanges—as narratives and rhetoric"); JEROME BRUNER, MAKING STORIES: LAW, LITERATURE, LIFE 3-62 (2002) (emphasizing the often unrecognized power of stories in legal proceedings).

34. BRUNER, *supra* note 33, at 37.

35. See generally PAUL C. GIANNELLI & EDWARD J. IMWINKELRIED, SCIENTIFIC EVIDENCE (3d ed. 1999) (covering a wide span of different types of scientific evidence and the legal procedures used to control their admissibility).

36. See App. 1 (Feb. 22-23, 2002; Feb. 26, 2002; Feb. 26-27, 2002) at 72-73; see also Brown, *supra* note 21 (noting that "[d]efense witnesses included 11 psychiatrists, physicians and mental health experts").

37. See *infra* notes 144, 175, 385-87 and accompanying text. But see *infra* notes 466-67 and accompanying text.

38. See *supra* notes 7, 12, 26 and accompanying text; see also *infra* notes 429-31 and accompanying text.

39. See *infra* notes 245, 272-74 and accompanying text.

depression or psychosis even though both sides agreed that Andrea severely suffered from the disorders and that they significantly affected her conduct.

Of course, expert witnesses are routinely used in litigation.<sup>40</sup> Dietz is simply one of the more prominent and prolific examples of what the criminal justice system seeks.<sup>41</sup> Despite the long history of expert witnesses in criminal trials, the justice system should question the fairness and efficacy of such an unregulated storytelling process. The potential for inequity is all the more pronounced in a case where the prosecution's story lacks factual justification, both sides agree the defendant is mentally ill, and the death penalty is at stake.

Part I of this Article briefly discusses Andrea's life up to her marriage to Rusty as well as the outcome of her trial. Part II provides an overview of the insanity defense and the strict Texas insanity standard. Part III examines Dietz's background, his reputation, and his psychiatric philosophy, in addition to his proclivity to testify for the prosecution. Part IV describes Andrea's history of mental illness, especially her postpartum psychosis that started with the birth of her first child and ended with a severe psychotic episode. Part V focuses on Dietz's testimony in the Yates trial, beginning with his pre-trial interview with Andrea and ending with an analysis of his conclusions. The discussion emphasizes the speculative nature of many of Dietz's statements and their lack of connection to Andrea's history of mental illness. Part VI presents the other perspectives and experts in the Yates case, and considers how the case might have reached a different result with a more consistent defense strategy or a less rigid insanity standard.

The Andrea Yates case is a vast, book-length, narrative. This commentary covers just a part of the trial. It is beyond this Article's scope, for example, to scrutinize the general role of psychiatric experts in the criminal justice system<sup>42</sup>

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40. Renee L. Binder, *Liability for the Psychiatrist Expert Witness*, 159 AM. J. PSYCHIATRY 1819, 1819-20 (2002) (noting that "[a]n increasing number of general psychiatrists are acting as expert witnesses in the legal system" and that "the use of experts in the legal system has proliferated in the past 30 years"); Steven Lubet, *Expert Witnesses: Ethics and Professionalism*, 12 GEO. J. LEGAL ETHICS 465, 465 (1999) (explaining that "[i]t is common in modern litigation to call individuals from a vast array of professions to testify as experts," including in criminal cases); L. Timothy Perrin, *Expert Witness Testimony: Back to the Future*, 29 U. RICH. L. REV. 1389, 1391 (1995) (stating that "expert testimony is used more today than ever before. Lawyers seem incapable of trying a lawsuit without one or more experts.").

41. See *infra* Part III.A.2. A Prosecutorial Bent; *infra* notes 146-49, 189, 216, 537 and accompanying text. The pronounced role of physicians as experts in the criminal justice system has a long history. See JAMES C. MOHR, *DOCTORS AND THE LAW: MEDICAL JURISPRUDENCE IN NINETEENTH-CENTURY AMERICA* (1993) (discussing the evolution of the modern association between this country's medical profession and the legal system, including the evolving history of doctors testifying in court); Mark Essig, *Poison Murder and Expert Testimony: Doubting the Physician in Late Nineteenth-Century America*, 14 YALE J.L. & HUMAN. 177, 177 (2002) (noting that the "triumph of the expert" commenced around 1900, attaining by 1920 a level of "enthusiasm unmatched elsewhere" and explaining that "[p]hysicians often occupy a starring role in this narrative of triumphant expertise" by developing over the decades "a remarkably powerful and prestigious professional organization").

42. For a thorough analysis of the subject see Christopher Slobogin, *Psychiatric Evidence in Criminal Trials: To Junk or Not to Junk?*, 40 WM. & MARY L. REV. 1, 2 (1998) (examining psychiatric and psychological testimony in criminal trials and questioning "whether this type of opinion evidence is worthy of consideration in courts of law"). See also J. Richard Ciccone, *Expert Testimony*, in 2 ENCYCLOPEDIA OF BIOETHICS 796, 796-99 (Warren Thomas Reich ed., 1995) (discussing the role of expert medical witnesses in the legal system, the advantages and disadvantages of the different models

or to review the research on postpartum depression and postpartum psychosis, which is available elsewhere.<sup>43</sup> Nonetheless, examining one piece of the Yates story can be enlightening. “Narrative, we are finally coming to realize, is indeed serious business—whether in law, in literature, or in life.”<sup>44</sup>

## I. THE EARLY LIFE AND TRIAL OF ANDREA YATES

### A. Meet the Yates Family

Andrea Yates was raised in the Houston area. Her family background appeared to be middle-American and middle-class.<sup>45</sup> Her father was a retired auto shop teacher who died of Alzheimer’s disease shortly before the killings.<sup>46</sup> Her mother, Jutta Karin, was a homemaker.<sup>47</sup> Andrea, the youngest of five, was expected to be a high achiever<sup>48</sup> and, in high school, she succeeded: she was captain of the swim team, a National Honor Society member, and valedictorian<sup>49</sup> of her 1982 graduating class. Upon completing a two-year pre-nursing program at the University of Houston, she went on to the University of Texas School of Nursing in Houston, graduating in 1986. From 1986 to 1994, she was employed as a registered nurse at the University of Texas M.D. Anderson Cancer Center.<sup>50</sup>

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for this role, as well as the ethics and admissibility of expert testimony) [hereinafter Ciccone, *Expert Testimony*]; J. Richard Ciccone, *Murder, Insanity, and Medical Expert Witnesses*, 49 ARCH. NEUROL. 608, 608 (1992) (analyzing the history of the insanity defense and the modern role of medical expert witnesses “in integrating clinical and laboratory findings”) [hereinafter Ciccone, *Murder*]; E.M. Coles & H.O.F. Veiel, *Expert Testimony and Pseudoscience: How Mental Health Professionals Are Taking Over the Courtroom*, 24 INT’L J.L. & PSYCHIATRY 607, 607-08 (2001) (purporting to “draw attention to some attitudes and practices that corrupt science and pervert the original purpose of expert testimony”); Arnold M. Ludwig, *A Bad Case of Mixed Metaphors: Psychiatry, Law, Politics, Society, and Ezra Pound*, 54 AM. J. PSYCHOTHERAPY 116, 116 (2000) (contending that “psychiatry has become so impressed by its seemingly scientific, diagnostic system and emerging technology that it no longer questions its fundamental conceptualizations”).

43. See, e.g., ANN L. DUNNEWOLD, EVALUATION AND TREATMENT OF POSTPARTUM EMOTIONAL DISORDERS (1997); INFANTICIDE: PSYCHOSOCIAL AND LEGAL PERSPECTIVES ON MOTHERS WHO KILL (Margaret G. Spinelli ed., 2003); CHERYL L. MEYER & MICHELLE OBERMAN, MOTHERS WHO KILL THEIR CHILDREN: UNDERSTANDING THE ACTS OF MOMS FROM SUSAN SMITH TO THE “PROM MOM” (2001); LITA LINZER SCHWARTZ & NATALIE K. ISSER, ENDANGERED CHILDREN: NEONATICIDE, INFANTICIDE, AND FILICIDE (2000); Deborah W. Denno, *Gender, Crime, and the Criminal Law Defenses*, 85 J. CRIM. L. & CRIMINOLOGY 80, 138-42 (1994); Shaila Misri et al., *Postpartum Blues and Depression*, in UP TO DATE (Burton D. Rose ed., 2003), available at <http://www.uptodate.com> [hereinafter Misri et al., *Postpartum Blues*]; Shaila Misri et al., *Postpartum Psychosis*, in UP TO DATE (Burton D. Rose ed., 2003), available at <http://www.uptodate.com> [hereinafter Misri et al., *Postpartum Psychosis*]. So far, this commentary is limited, particularly in psychiatric journals, where it is most needed.

44. BRUNER, *supra* note 33, at 107.

45. See Roche, *supra* note 1, at 45.

46. See App. 1 (Mar. 12, 2001) at 67; Alan Bernstein & Miriam Garcia, *A Life Unraveled: Mother Depicted as Private, Caring and Burdened by Hidden Problems*, HOUS. CHRON., June 24, 2001, at A1.

47. Bernstein & Garcia, *supra* note 1, at 45.

48. See Roche, *supra* note 1, at 45.

49. See Paula Zahn & Ed Lavandera, *Do New 911 Tapes Help Andrea Yates Defense?*, MORNINGS WITH PAULA ZAHN (CNN television broadcast, Dec. 12, 2001) available at <http://www.cnn.com/transcripts/0112/12/ltn.11.html>.

50. See Roche, *supra* note 1, at 45.

Andrea's nursing career ceased entirely, however, soon after her marriage to Rusty.<sup>51</sup>

Andrea and Rusty first met in 1989 at the Houston apartment complex where they both resided. Both were twenty-five at the time.<sup>52</sup> Rusty, "a popular jock" in high school and a summa cum laude graduate of Auburn University, was designing computer systems for NASA.<sup>53</sup> Andrea approached him first in conversation—an uncharacteristically bold move for her, Rusty would later reveal.<sup>54</sup> Only after Andrea's arrest would Rusty learn that she had never dated until she had turned twenty-three, that she was recuperating from a romantic break-up at the time they met, and that her directness in initiating contact with him was prompted by intense loneliness and, perhaps, depression.<sup>55</sup> Andrea and Rusty spent the next few years becoming acquainted, "living together, reading the Bible, and praying."<sup>56</sup>

Their April 17, 1993 wedding ceremony was small and simple. Surprisingly, it was also nondenominational,<sup>57</sup> perhaps because of the influence of Rusty's spiritual mentor, Michael Woroniecki, from whom "[h]e had learned the faults of organized religion."<sup>58</sup> The couple confidently announced to wedding guests that they would not use birth control—they wanted as many children as nature would provide.<sup>59</sup> Their desire for children was immediately fulfilled. Within three months, Andrea was pregnant<sup>60</sup> with the first of five children. Eight years later she would kill them all.<sup>61</sup>

## B. The Yates Trial

On July 30, 2001, Andrea was indicted on two counts of capital murder for the deaths of Noah (seven), John (five), and Mary (six months),<sup>62</sup> but not for the deaths of her other two children, Luke (three) and Paul (two).<sup>63</sup> All of the indictments were for capital murder because they involved more than one person and victims less than six years old.<sup>64</sup> On the same day, Andrea's attorneys, George Parnham and Wendell Odom, filed a "notice of intent to offer evidence of the insanity defense," based upon the testimony of two psychiatrists claiming

51. *See id.*

52. *See id.*; SPENCER, *supra* note 1, at 129.

53. *See* SPENCER, *supra* note 1, at 128; Roche, *supra* note 1, at 45.

54. *See* SPENCER, *supra* note 1, at 129; Roche, *supra* note 1, at 45.

55. *See* SPENCER, *supra* note 1, at 80 (citing evidence that Andrea had been treated for depression when she was working as a nurse).

56. *See* Roche, *supra* note 1, at 45.

57. *See* App. 1 (Apr. 17, 1993) at 61.

58. Roche, *supra* note 1, at 48; *see also* Keith Morrison, *A Preacher Speaks Out: Spiritual Advisor to Andrea and Rusty Yates Talks about the Tragedy*, *Dateline NBC* (NBC television broadcast, Mar. 20, 2002) available at <http://www.msnbc.com/news/726946.asp?0dm=-24GV&cp1=1> (noting Woroniecki's view that priests and churches are not necessary components of religious worship).

59. *See* App. 1 (Apr. 17, 1993) at 61.

60. *See id.* (June 1993) at 61.

61. *See id.* (June 20, 2001) at 70.

62. *See id.* (July 30, 2001) at 71.

63. *See id.*

64. *See id.*

that Andrea was, at the time of the killings, “mentally insane” as defined by the Texas Penal Code.<sup>65</sup>

The insanity defense for Andrea would ultimately dissolve.<sup>66</sup> Within eight months following her indictment, one jury decided that Andrea was sufficiently competent to stand trial for killing her children<sup>67</sup> and another refused her insanity plea.<sup>68</sup> Although this second jury declined to impose the death penalty,<sup>69</sup> Andrea received a mandatory life sentence for the killings.<sup>70</sup> Under the Texas capital felony statute, an inmate must serve forty years in prison before becoming eligible for parole.<sup>71</sup> The case is currently on appeal.<sup>72</sup>

Many theories could explain Andrea’s conviction. Of course, the primary theory would speculate that the jury was so horrified by Andrea’s acts that any psychiatric evidence offered on her behalf paled in comparison. Yet, the continuing controversy and debate over Andrea’s conviction<sup>73</sup> suggest that there may be other, more complex, explanations.

Additional rationales primarily point to the retributive aspects of Texas law and culture. As one Harris County resident explained, “There’s the rule of law, and there’s the rule of law in Texas . . . . The rule of law in Texas is kind of cowboy law.”<sup>74</sup> For example, Texas consistently executes more individuals than any other state;<sup>75</sup> annually it accounts for one-third of all executions in the country,<sup>76</sup> a pattern that conflicts with both national and international abolitionist trends. Harris County in particular is responsible for over one-third of the state’s death row inmates, making it the harshest death penalty jurisdiction in the country<sup>77</sup>

65. *See id.*

66. *See id.* (Mar. 12, 2002) at 74. Because the trial transcript is not yet fully available, the exact details of the Yates case are not known apart from what has been published in the media. *See supra* note 30 and accompanying text.

67. *See App. 1* (Sept. 22, 2001) at 72.

68. *See id.* (Mar. 12, 2002) at 74.

69. *See id.* (Mar. 16, 2002) at 74-75.

70. *See id.* (Mar. 18, 2002) at 75.

71. *See id.* (Mar. 18, 2002 n.209) at 84.

72. *See id.* (Apr. 3, 2002) at 75.

73. *See supra* notes 36-39 and accompanying text and *infra* note 145 and accompanying text.

74. Kate Zernike, *A Wife Betrayed Finds Sympathy at Murder Trial*, N.Y. TIMES, Jan. 24, 2003, at A18 (quoting a resident in neurosurgery).

75. Deborah W. Denno, *When Legislatures Delegate Death: The Troubling Paradox Behind State Uses of Electrocution and Lethal Injection and What It Says About Us*, 63 OHIO ST. L.J. 63, 116-17 (2002); William S. Lofquist, *Putting Them There, Keeping Them There, and Killing Them: An Analysis of State-Level Variations in Death Penalty Intensity*, 87 IOWA L. REV. 1505, 1546-47 (2002); Amnesty International, *United States of America: Texas—In a World of its Own as 300th Execution Looms*, Jan. 23, 2003, available at <http://www.web.amnesty.org/library/Index/ENGAMR510102003?open&of=ENG-USA>.

76. Amnesty International, *supra* note 75 (stating that “[w]hile the State of Texas accounts for less than 10 per cent of the USA’s population, it has been responsible for more than a third of the national judicial death toll since 1976”).

77. *Id.*; *see also* SPENCER, *supra* note 1, at 148 (asserting that “Harris County proudly called itself the death capital of the United States”); Cheryl L. Meyer & Margaret G. Spinelli, *Medical and Legal Dilemmas of Postpartum Psychiatric Disorders*, in Spinelli, *supra* note 43, at 167, 174 (noting that “Harris county prosecutors have sent more people to death row than any other county in Texas, a state that has led the nation in executions”); *A Deadly Distinction*, HOUS. CHRON., Feb. 5, 2001, at A1 (emphasizing that, with respect to the rates of execution attributed to Harris County, “one of the cruellest anomalies of the modern system of capital punishment” is that “geography means everything”);

and one of the most punitive in the Western world.<sup>78</sup> If Harris County were considered a state, it would follow only two other states (Texas and Virginia) in its number of executions since 1977.<sup>79</sup>

Because the Yates prosecution sought the death penalty, Andrea's jury was "death qualified." In other words, the prosecution could exclude potential jurors for cause if their negative views toward the death penalty were so strong they "would 'prevent or substantially impair the performance of [their] duties as [jurors]'"<sup>80</sup> and therefore render them "unable to faithfully and impartially apply the law."<sup>81</sup> Research shows that death qualified juries are more anti-civil libertarian in attitude, particularly with respect to such principles as presumption of innocence and burden of proof, and they are significantly more likely to convict than juries that are not death qualified.<sup>82</sup> Presumably, then, Andrea's jury was far less able to "comprehend the inconceivable"<sup>83</sup> in evaluating an insanity defense relative to a jury that had not been death qualified.

The Texas insanity standard is a comparably strict rule of law; in the eyes of one legal commentator, it is "one of the most stringent" in the United States.<sup>84</sup>

Andrew Gumbel, *In God's Name*, THE INDEPENDENT (London), Mar. 14, 2002, at 1 ("Yates had the misfortune to fall under the jurisdiction of Harris County . . . which has a reputation as the most gung-ho prosecutorial machine in the United States. It has sent more defendants to Death Row than any other county, a fact that its prosecutors tend to wear as a badge of pride.").

78. Amnesty International, *supra* note 75. See generally ROGER HOOD, THE DEATH PENALTY: A WORLDWIDE PERSPECTIVE (3d ed. 2002) (documenting the increase in abolitionist countries over the decades).

79. Amnesty International, *supra* note 75. The death penalty statistics on Harris County are daunting. According to the Amnesty International report:

If Texas is the death penalty capital of the USA, Harris County, home to about 15 per cent of the state's population, is its main supplier of condemned inmates. Thirty-five per cent of the 450 men and women on death row in Texas were sent there by Harris County juries. Only seven of the thirty-eight death penalty states in the USA—Alabama, California, Florida, North Carolina, Ohio, Pennsylvania, and the rest of Texas—currently have more people on death row than Harris County. Nearly a quarter of the 291 prisoners executed in Texas between December 1982 and December 2002 were sentenced to death in this county.

*Id.*

80. *Wainwright v. Witt*, 469 U.S. 412, 424 (1985).

81. *Id.* at 426.

82. Brooke M. Butler & Gary Moran, *The Role of Death Qualification in Venirepersons' Evaluations of Aggravating and Mitigating Circumstances in Capital Trials*, 26 LAW & HUM. BEHAV. 175, 176-77 (2002); see also *State v. Yates*, Motion to Prevent the State from Excluding Qualified Jurors (Dist. Ct. Harris County, Tex.) (Oct. 30, 2001) (contending that "the state is acting in bad faith in seeking the death penalty based on the unique facts in this case and as such depriving the defendant of jurors she is constitutionally entitled to have sit in judgment over her").

83. George J. Parnham, *Insanity: Helping the Jury Comprehend the Inconceivable 2* (n.d.) (on file with author) (noting that "there is a surprising percentage of the general population that simply refuses to accept the reality of a mental disease" and that "[m]any of the potential jurors, if they are honest, will acknowledge their belief that the defense of insanity is simply an excuse and/or trick used by defense attorneys to get a, yet, otherwise responsible individual 'off the hook'").

84. Elaine Cassel, *The Andrea Yates Verdict and Sentence: Did the Jury Do the Right Thing?*, FINDLAW'S WRIT, Mar. 18, 2002, at [http://writ.news.findlaw.com/commentary/20020318\\_cassel.html](http://writ.news.findlaw.com/commentary/20020318_cassel.html); see also TOM WHATLEY, RESHAPING THE INSANITY DEFENSE, House Study Group: Special Legislature Rep. 5 (Tex. House of Representatives 1984) (comparing the Texas death penalty standard to other state standards); Pam Easton, *Parnham: Insanity Statute Needs to Change*, HOUSTONCHRONICLE.COM, Mar. 28, 2002, at <http://www.chron.com/cs/CDA/story.hts/special/>

The Yates jury judged psychiatric testimony not only by Texas culture but also by that culture's narrow legal view of what constitutes insanity.

## II. THE INSANITY DEFENSE

### A. A Brief Overview of the Insanity Defense

Part II explores only the very basics of the insanity defense and how it is applied in the state of Texas.<sup>85</sup> The insanity defense is considered one of the most controversial criminal law doctrines, not only because of intense debate over how “insanity” should be defined, but also because of increasing conflict over whether the defense should exist in any form.<sup>86</sup> Statistics show that insanity pleas are seldom raised or successful in states throughout the country,<sup>87</sup> including Texas.<sup>88</sup> Nonetheless, the defense rankles social and community tensions over two conflicting goals: the desire to punish the horrendous, highly publicized crimes that the public typically hears about versus the need to understand that some mentally ill people should not be held responsible for what they do.<sup>89</sup>

#### 1. The Major Legal Standards for Insanity

The legal standard for insanity varies across the fifty states.<sup>90</sup> The first and strictest insanity test of modern usage was introduced in 1843 by the English House of Lords in the *M’Naghten* case.<sup>91</sup> Under *M’Naghten*, a person is insane if, because of a “disease of the mind” at the time she committed the act, she (1) did

drownings/1321217 (discussing a panel at Texas Southern University Law School concerning efforts to change the state’s insanity statute as a result of the conviction of Andrea Yates).

85. See generally GARY B. MELTON ET AL., *PSYCHOLOGICAL EVALUATIONS FOR THE COURTS: A HANDBOOK FOR MENTAL HEALTH PROFESSIONALS AND LAWYERS* 186-248 (2d ed. 1997) (discussing the basic procedural aspects of the insanity defense); MICHAEL L. PERLIN, *4 MENTAL DISABILITY LAW: CIVIL AND CRIMINAL* (2d ed. 2001); RALPH REISNER ET AL., *LAW AND THE MENTAL HEALTH SYSTEM: CIVIL AND CRIMINAL ASPECTS* (3d ed. 1999).

86. See Michael L. Perlin, *Excuse: Insanity*, in 2 *ENCYCLOPEDIA OF CRIME & JUSTICE* 650-57 (Joshua Dressler et al. eds., 2d ed. 2002); Christopher Slobogin, *An End to Insanity: Recasting the Role of Mental Disability in Criminal Cases*, 86 VA. L. REV. 1199, 1199-200 (2000).

87. See generally MELTON ET AL., *supra* note 85, at 187-88 (providing state-wide comparisons demonstrating how infrequently the insanity plea is made and the low rate in which it is successful); PERLIN, *supra* note 85, at § 9C-3.1, 331-32 (noting the tendency of the public and the legal profession to “grossly” overestimate” the number of insanity verdicts). For example, nationally, insanity acquittals probably constitute no more than 0.2 percent of terminated felony prosecutions. NAT’L MENTAL HEALTH ASS’N, *MYTHS & REALITIES: A REPORT OF THE NATIONAL COMMISSION ON THE INSANITY DEFENSE* 15 (1983). Data from New York specifically demonstrate a similar pattern. Defendants raise the insanity defense about once in every 600 to 700 cases and the defense is successful in about twenty-five percent of the cases in which it is invoked. *Id.*

88. WHATLEY, *supra* note 84, at 10-11.

89. JOSHUA DRESSLER, *UNDERSTANDING CRIMINAL LAW* 335 (3d ed. 2001).

90. MELTON ET AL., *supra* note 85, at 192-93. During the course of this country’s history, five insanity standards have been used at some point: the *M’Naghten* rule; the “irresistible impulse” or “control” test; the *Durham* or “product” test; the American Law Institute’s Model Penal Code standard in § 4.01; and the federal statutory standard for insanity. See *id.* at 190-93.

91. 8 Eng. Rep. 718 (1843). For a superb discussion of the history of the *M’Naghten* Case, see RICHARD MORAN, *KNOWING RIGHT FROM WRONG: THE INSANITY DEFENSE OF DANIEL MCNAUGHTAN* (1981).

not know the “nature and quality of the act” that she was performing; or (2) if she was aware of the act, she did not know that what she “was doing was wrong,” that is, she did not know the difference between right and wrong.<sup>92</sup> The *M’Naghten* rule, which soon became the most widely accepted insanity test in the United States,<sup>93</sup> considers only cognitive ability and not volitional conduct.<sup>94</sup>

Concern over the narrowness of the *M’Naghten* test prompted attempts over the years to replace it.<sup>95</sup> The most successful attempt was the American Law Institute (ALI)’s 1962 insanity test which rapidly gained support from legislatures and courts; by the 1980s, the ALI standard was adopted nearly unanimously by the federal circuit courts and over one-half of the states.<sup>96</sup> Under the ALI test, an individual is not responsible for her criminal conduct if, because of mental disease or defect, she either lacked “substantial capacity” to appreciate the “criminality” (or, at the opting of the state legislature, the “wrongfulness”) of her conduct, or she failed to “conform” her conduct “to the requirements of law.”<sup>97</sup>

The differences between the ALI and *M’Naghten* tests are striking. For example, the ALI test accepts both *cognitive* and *volitional* impairment as an excuse. In other words, the test considers a defendant’s cognitive ability to “appreciate” the criminality or wrongfulness of her conduct as well as her ability to “conform” her conduct to the law.<sup>98</sup> This added “conform” requirement is often characterized as a “lack-of-control defense,” pertaining to those individuals whose mental disease or defect leads them to lose control over their actions at the time they commit an offense.<sup>99</sup>

The ALI and *M’Naghten* standards vary in other important ways. The ALI test requires only that defendants “lack substantial capacity,” not total capac-

92. *M’Naghten’s Case*, 8 Eng. Rep. at 722. The exact standard is as follows:

[T]o establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused at the time of doing the act knew the difference between right and wrong.

*Id.* Compare *infra* note 132.

93. MELTON ET AL., *supra* note 85, at 191.

94. Slobogin, *supra* note 86, at 1210-11 (reviewing the literature criticizing this narrow scope).

95. See Grant H. Morris & Ansar Haroun, “*God Told Me to Kill: Religion or Delusion?*,” 38 SAN DIEGO L. REV. 973 (2001).

96. PERLIN, *supra* note 85, at 162.

97. MODEL PENAL CODE § 4.01(1) at 163 (Official Draft and Revised Comments, 1985) [hereinafter MODEL PENAL CODE 1985]. The exact standard is as follows:

A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of the law.

*Id.*

98. See *supra* notes 92, 94, 97.

99. MELTON ET AL., *supra* note 85, at 198-201.

ity.<sup>100</sup> In turn, the ALI applies the broader term “appreciate” rather than “know” when specifying the type of cognitive impairment that leads to insanity; hence, the defendant’s lack of emotional understanding can be incorporated into the defense.<sup>101</sup> The ALI test also allows the state legislature to consider “wrongfulness” rather than “criminality.” This choice enables a finding of insanity if the accused does not know the act was illegal and also if she believes the act was “morally justified” according to community standards.<sup>102</sup> At the same time, both the ALI and *M’Naghten* tests skirt any set definition of the term “mental disease or defect.”<sup>103</sup> According to the ALI, such an open-ended approach allows the term “to accommodate developing medical understanding”<sup>104</sup> and therefore avoid the constraints of old science.

The popularity of the ALI test dwindled in 1981 when a jury found John Hinckley not guilty by reason of insanity, based on an ALI standard, for his attempted assassination of Ronald Reagan.<sup>105</sup> The effects of the public furor over Hinckley’s acquittal were immediate:<sup>106</sup> the federal government and several of the ALI test states abolished the volitional component of the test entirely and imposed other limits, in some cases reverting back to a *M’Naghten*-type standard.<sup>107</sup> According to a 1995 survey of insanity laws, about twenty states still use the ALI test while nearly half of the states apply “[s]ome variation of the *M’Naghten*/cognitive impairment-only test.”<sup>108</sup> A handful of states have abolished the insanity defense entirely.<sup>109</sup>

## 2. Modern Problems with the *M’Naghten* Insanity Standard

The return to a *M’Naghten*-type standard spotlights the problems that the test has always had and why there have been continuing efforts to change it. For

100. According to the ALI drafters, “[t]he adoption of the standard of substantial capacity may well be the Code’s most significant alteration of the prevailing tests.” MODEL PENAL CODE 1985, *supra* note 97, § 4.01 cmt. 3, at 172.

101. *Id.* at 169 (“The use of [the term] ‘appreciate’ rather than ‘know’ conveys a broader sense of understanding than simple cognition.”).

102. *Id.* at 169-70.

103. MELTON ET AL., *supra* note 85, at 196 (explaining that “legal definitions of the mental disease or defect threshold, if they exist at all, are extremely vague and will vary from jurisdiction to jurisdiction. Thus, it would be unwise to assume that a particular diagnosis can be equated with insanity or its threshold.”).

104. MODEL PENAL CODE 1985, *supra* note 97, § 4.01 cmt. 3, at 169.

105. PERLIN, *supra* note 85, at 325-28; REISNER ET AL., *supra* note 85, at 538-39. For a thorough account of the Hinckley case, see RICHARD J. BONNIE ET AL., THE TRIAL OF JOHN W. HINCKLEY, JR.: A CASE STUDY IN THE INSANITY DEFENSE (2d ed. 2000); LINCOLN CAPLAN, THE INSANITY DEFENSE AND THE TRIAL OF JOHN W. HINCKLEY, JR. (1984).

106. The swift reforms in the insanity defense following the Hinckley verdict demonstrate the strength of public opinion. Polls conducted the day after the verdict was announced showed so much public indignation that legislative and presidential reaction and change were immediate. See Valerie P. Hans & Dan Slater, *John Hinckley, Jr. and the Insanity Defense: The Public’s Verdict*, 47 PUB. OPINION Q. 202, 202-03 (1983) (for example, Delaware passed new legislation the day after the verdict was announced).

107. REISNER ET AL., *supra* note 85, at 526-27.

108. MELTON ET AL., *supra* note 85, at 193.

109. Slobogin, *supra* note 86, at 1200 n.2, 1214 (the five states are Idaho, Kansas, Montana, Nevada, and Utah).

example, the word “know” and the phrase “nature and quality of the act” can be defined either very broadly or narrowly.<sup>110</sup> Such vagueness gives legal actors little guidance for interpreting the test and heightens the chance that they will apply it inconsistently across different cases. Likewise, it is not clear whether the “wrong” in the right-and-wrong prong pertains to legal or moral wrongdoing because the language in *M’Naghten* itself could bolster either approach.<sup>111</sup> England has since established that the right-and-wrong element represents the defendant’s recognition that an act is legally wrong.<sup>112</sup> Yet, American law sides in the opposite direction.<sup>113</sup> Most American courts have interpreted the word “wrong” to mean “moral wrong,” not “legal wrong.”<sup>114</sup> This issue was important in the Yates case because Texas law does not specify a particular approach<sup>115</sup> and a moral wrong approach would have benefited Andrea. According to some defense experts, Andrea knew that her acts were illegal but she believed they were morally right, given the context of her delusional circumstances.<sup>116</sup>

In American states that apply the moral right-and-wrong test, questions typically concern whether the defendant knowingly transgressed *society’s* standards of morality, not whether the *defendant* personally perceived *her* acts to be morally acceptable. In other words, even if a defendant is mentally ill and, as a result, commits an offense that she believes is *morally* correct, she is considered sane if she is aware that her conduct is condemned by society.<sup>117</sup> As one commentator notes, however, this difference can “be blurred to near extinction” depending on how the particular circumstances in a case are pitched.<sup>118</sup> For example, a mentally ill individual “is apt to know that society considers it morally wrong to kill, but if she is acting pursuant to a delusionary belief that God wants her to kill, she might now believe that society would agree with her God-endorsed actions.”<sup>119</sup>

Interpretation of the moral-right-and-wrong standard can vary somewhat in the few *M’Naghten* jurisdictions that have a “deific decree doctrine,” in other words, a rule that allows a mentally disordered defendant to be judged legally insane if she believes that she is acting under the direct command of God (for

110. DRESSLER, *supra* note 89, at 346-47 (2001).

111. *Id.* at 347; *see also* Morris & Haroun, *supra* note 95, at 1008 (explaining that the *M’Naghten* judges did not specify “whether a defendant is insane if he or she knows the act is illegal, but who, through mental disorder, believes the act to be moral”).

112. *Regina v. Windle*, 2 All E.R. 1, 2 (1952).

113. Morris & Haroun, *supra* note 95, at 1013.

114. *Id.* at 1013 n.247 (“Although a few courts have construed the word ‘wrong’ to mean ‘legal wrong,’ most have adopted the ‘moral wrong’ interpretation.”) (citations omitted).

115. *See infra* notes 130-37, 144-45 and accompanying text.

116. *See infra* notes 463-65 and accompanying text.

117. DRESSLER, *supra* note 89, at 347. The California Supreme Court has clarified the distinction:

[M]orality . . . is . . . not simply the individual’s belief in what conduct is or is not good. While it need not reflect the principles of a recognized religion and does not demand belief in a God or other supreme being, it does require a sincerely held belief grounded in generally accepted ethical or moral principles derived from an external source.

*People v. Coddington*, 2 P.3d 1081, 1144 (Cal. 2000), *overruled on other grounds by* *Price v. Superior Court*, 25 P.3d 618 (Cal. 2001).

118. DRESSLER, *supra* note 89, at 347 n.73.

119. *Id.*

example, a belief that God commanded the defendant to kill someone).<sup>120</sup> Two primary rationales explain the origins of the deific decree doctrine. First, the doctrine “was merely a logical extension of the Judeo-Christian belief that God would not order a person to kill another” because the Sixth Commandment prohibits murder.<sup>121</sup> Therefore, a person thinking that God is commanding her to kill is entertaining a false belief and thus should not be held accountable. Likewise, nineteenth-century courts and juries would not grant the insanity defense to individuals contending that they acted under the command of the Devil or some other religiously corrupt figure because people accepted only “the One True God.”<sup>122</sup> Second, the doctrine may have been a vehicle for inserting a volitional component exception to the cognitive-only limitations of the *M’Naghten* rule so that *M’Naghten* could incorporate at least a narrow category of uncontrolled individuals.<sup>123</sup>

The exceptions and qualifications for the deific decree doctrine apparently still apply today for defendants experiencing such “command hallucinations.”<sup>124</sup> The doctrine presumes that the defendant’s behavior results from a delusion (a “false belief based on incorrect inference about external reality”),<sup>125</sup> and not from a religious conviction,<sup>126</sup> although determining the difference between the two can be very difficult.<sup>127</sup> While some jurisdictions treat the deific decree rule as an exception to the general insanity standard, other jurisdictions view it as a major factor in assessing an individual’s capability to tell right from wrong.<sup>128</sup> Irrespective of a jurisdiction’s particular approach, these right-wrong issues were key in the Andrea Yates case. Andrea’s command hallucinations were a focus of the

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120. Morris & Haroun, *supra* note 95, at 1003.

121. *Id.*

122. *Id.* at 1004.

123. *Id.*

124. A hallucination is “[a] sensory perception that has the compelling sense of reality of a true perception but that occurs without external stimulation of the relevant sensory organ . . . . The person may or may not have insight into the fact that he or she is having a hallucination.” AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, TEXT REVISION (DSM-IV-TR) 823 (4th ed. 2000) [hereinafter DSM-IV-TR].

125. *Id.* at 821. A more complete definition of “delusion” is as follows:

A false belief based on incorrect inference about external reality that is firmly sustained despite what almost everyone else believes and despite what constitutes incontrovertible and obvious proof or evidence to the contrary. The belief is not one ordinarily accepted by other members of the person’s culture or subculture (e.g., it is not an article of religious faith). When a false belief involves a value judgment, it is regarded as a delusion only when the judgment is so extreme as to defy credibility. Delusional conviction occurs on a continuum and can sometimes be inferred from an individual’s behavior. It is often difficult to distinguish between a delusion and an overvalued idea (in which case the individual has an unreasonable belief or idea but does not hold it as firmly as is the case with a delusion).

*Id.*

126. Morris & Haroun, *supra* note 95, at 1003.

127. *See id.* at 1014.

128. DRESSLER, *supra* note 89, at 348.

expert testimony and what was supposed to be considered “wrong” was neither specified, nor constrained, in the jury charge.<sup>129</sup>

## B. The Texas Insanity Standard

In 1973, Texas joined the ranks of other states and adopted the more lenient ALI definition of insanity.<sup>130</sup> A decade later, however, the state returned to a *M’Naghten* type standard, partly in response to developments surrounding the Hinckley verdict.<sup>131</sup> Yet, a critical feature of the Texas test<sup>132</sup> is that it is even narrower than *M’Naghten*, although comparably confusing. The typical *M’Naghten* standard refers to two parts: the defendant’s ability to know (1) the “nature and quality of the act committed” or (2) whether the act was “right or wrong.”<sup>133</sup> The Texas standard, however, eliminates the first part and refers only to the second, that is, whether the defendant knew the act was right or wrong.<sup>134</sup> Texas also limits the defense to cases of *severe mental illness* and puts the burden of proving insanity on defendants.<sup>135</sup> As legal commentators rightly contend, the Texas standard “could hardly be narrower”<sup>136</sup> or more “impossible to meet.”<sup>137</sup>

Similar to the *M’Naghten* standard, defining the terms “right” and “wrong” is a problem.<sup>138</sup> For example, the Texas insanity statute does not clarify whether “wrong” should be considered from a legal or a moral standpoint.<sup>139</sup> This ambiguity was a key issue in the Yates case, both for the law and the psychiatric pro-

129. Mary Connell, *Expert Opinion*, AM. PSYCHOL. L. SOC’Y NEWS, Spring/Summer 2002, at 18, 19 (quoting Mary Alice Conroy, the Director of Practicum Training for the Forensic Clinical Psychology Program at Sam Houston State University).

130. Ray Farabee & James L. Spearly, *The New Insanity Law in Texas: Reliable Testimony and Judicial Review of Release*, 24 S. TEX. L. J. 671, 673 (1983).

131. WHATLEY, *supra* note 84, at 5.

132. See TEX. PENAL CODE ANN. § 8.01 (Vernon 2002). The Texas test defines insanity in the following terms:

- (a) It is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of severe mental disease or defect, did not know that his conduct was wrong.
- (b) The term ‘mental disease or defect’ does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

*Id.*

133. See *supra* notes 91-94, 110-14 and accompanying text.

134. See *supra* note 132; see also *infra* notes 141-43 and accompanying text (describing the confusion concerning jurors’ interpretations of “wrong”).

135. WHATLEY, *supra* note 84, at 12; see also Farabee & Spearly, *supra* note 130, at 681-84.

136. Cassel, *supra* note 84; see also Jennifer Bard, *Unjust Rules for Insanity*, N.Y. TIMES, Mar. 13, 2002, at A25; Katherine Seligman, *Legal Affairs*, S. F. CHRON., Mar. 17, 2002, at A6.

137. Bard, *supra* note 136; Seligman, *supra* note 136.

138. See *supra* notes 110-13.

139. Connell, *supra* note 129, at 18-19. According to Mary Alice Conroy, the Director of Practicum Training for the Forensic Clinical Psychology Program at Sam Houston State University, *id.* at 18, *Bigby v. State*, 892 S.W.2d 864 (Tex. Crim. Ct. App. 1994), is often cited as bolstering a very limited, totally legal, definition of “wrong.” Connell, *supra* note 129, at 18. However, Conroy notes that *Bigby* did not directly address the conflict between moral and legal wrongfulness because the defendant, who was denied the insanity defense, stated that his actions were illegal. While the *Bigby* court enabled the state to contend that “wrong” should mean legally wrong, the court’s effort was to uphold the jury’s use of reasonable discretion in how it would view the word “wrong” rather than binding future courts with a definition of “legal wrong.” *Id.*

fession. As one psychiatric expert commenting on the case said, there is still no “test” available to determine who is genuinely controlled by command hallucinations; rather, psychiatrists must rely on “a certain degree of approximation[]” in their assessments.<sup>140</sup> Likewise, the Yates jury charge did not specify what “wrong” should mean and expert testimony did not seem to restrict the definition of “wrongfulness.”<sup>141</sup> The Yates jury was free to use the term’s “common and ordinary meaning”<sup>142</sup> and apply “the statutory language to the facts as it saw fit.”<sup>143</sup>

Such a legally muddled circumstance prompted conflicting approaches to interpreting the Texas insanity standard. As the Yates case evolved, for example, it became clear that both the prosecution and the defense would define the legal-or-moral wrong issue because of the statute’s silence. Both sides agreed that Andrea was mentally ill and, in general, that she knew her actions were legally wrong.<sup>144</sup> The issue of whether Andrea’s mental illness rendered her unable to control her actions, although hotly debated, was moot under the narrow confines of the Texas insanity statute.<sup>145</sup> Thus, only one significant question was left for the jury to resolve: Did Andrea know that her actions were morally wrong?

### III. PARK DIETZ’S EXPERTISE AND PSYCHIATRIC PHILOSOPHY

There was little legal or psychiatric clarity guiding the determinations to be made in the Yates case. For this reason, the opinions of expert witnesses were especially important. According to a synopsis of the ethical guidelines established by the American Academy of Psychiatry and the Law, “the medical expert is expected to provide a clinical evaluation and a review of the applicable data in light of the legal question posed and in the spirit of honesty and striving for objectivity—the expert’s ethical and professional obligation.”<sup>146</sup> The Academy specifies that such an obligation “includes a thorough, fair, and impartial review and should not exclude any relevant information in order to create a view favoring either the plaintiff or the defendant.”<sup>147</sup>

According to some legal commentators, Park Dietz’s expert testimony was considered “crucial”<sup>148</sup> for the conviction of Andrea Yates—the “defining moment” of the trial.<sup>149</sup> Part III examines Dietz’s background, experience, and psy-

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140. Michael Jonathan Grinfeld, *Mother’s Murder Conviction Turns Insanity Defense Suspect*, 19 PSYCHIATRIC TIMES, June 2002, available at <http://www.psychiatrictimes.com/p020601.html>.

141. Connell, *supra* note 129, at 18-19.

142. *Id.* at 19.

143. Cassel, *supra* note 84.

144. See generally *infra* Part VI (discussing experts’ views of Andrea’s knowledge of the legality of her actions).

145. Brown, *supra* note 21.

146. Ciccone, *Expert Testimony*, *supra* note 42, at 797 (citing the American Academy of Psychiatry and the Law, *Ethical Guidelines for the Practice of Forensic Psychiatry*, 12 NEWSLETTER 16, 17 (1987)).

147. *Id.*

148. *Interview: Dr. Park Dietz*, TIME.COM, Mar. 19, 2002, available at <http://www.time.com/time/nation/printout/0,8816,218743,00.html>.

149. *The Yates Case: Criminal Defense Attorney Brian Wice Comments on the Trial of the Houston Mother Who Drowned Her Five Children*, COURT.TV.COM, Mar. 7, 2002, available at [http://www.court.tv.com/talk/chat\\_transcripts/2002/0307yates-wice.html](http://www.court.tv.com/talk/chat_transcripts/2002/0307yates-wice.html) (quoting criminal defense attorney Brian

chiatric philosophy in an effort to explain why Dietz's story about Andrea seemed so much more compelling than the other stories experts had to offer. Notably, much of the information about Dietz derives from interviews with Dietz himself, or from his supporters, in magazines and newspapers. Dietz is commendably forthright about his views in general and was immediately open to commenting on the Yates case as soon as Andrea was sentenced.<sup>150</sup> What becomes apparent is how his own self-described, pro-prosecution leanings could mesh so well with a death qualified, Harris County jury.

#### A. Dietz's Background and Reputation

Park Dietz is considered one of the most "prominent and provocative" psychiatric expert witnesses in the country.<sup>151</sup> In one professional capacity or another, he has been involved with a long list of famous homicide defendants: John Hinckley, Jr., Jeffrey Dahmer, Susan Smith, Melissa Drexler, the Menendez brothers, O.J. Simpson (in the civil case), and Ted Kaczynski, to name a few.<sup>152</sup> He can now add Andrea Yates to that list. As the prosecution's star witness in the Yates case,<sup>153</sup> he both interviewed and videotaped Andrea,<sup>154</sup> and he subsequently testified in court about his evaluation.<sup>155</sup>

Dietz also has extensive professional credentials. He acquired a B.A. from Cornell in biology and psychology, an M.D. from Johns Hopkins School of Medicine, and a Masters in Public Health and Ph.D. in sociology, both from Johns Hopkins. He has held academic posts at Johns Hopkins, the University of Pennsylvania, Harvard, and the University of Virginia.<sup>156</sup> His professional experience is substantial, including consulting positions with the Department of Justice and the Federal Bureau of Investigation.<sup>157</sup> In addition, Dietz has over one hundred publications, "nearly all" of which concern violent or injurious behavior,<sup>158</sup> and he has examined "thousands" of criminal defendants for forensic psychiatric purposes, including sanity determinations.<sup>159</sup>

Currently (and at the time he testified in the Yates trial), Dietz runs two businesses in Newport Beach, California. He is the president and founder of Park Dietz & Associates, Inc., forensic consultants in medicine and the behav-

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Wice as stating that Andrea's fate "will likely turn" on the cross-examination of Dietz, which "will for better or worse be the defining moment of this trial").

150. Dietz's interview in the *New York Times* a month after Andrea's sentencing was particularly noteworthy. See Anastasia Toufexis, *A Conversation with Park Dietz: A Psychiatrist's-Eye View of Murder and Insanity*, N.Y. TIMES, Apr. 23, 2002, at F5.

151. *Id.*; see also Joyce Johnson, *Witness for the Prosecution*, NEW YORKER, May 16, 1994, at 42 (characterizing Dietz as "the virtuoso expert witness who keeps showing up on Court TV").

152. See App. 4 at 99, tr. at 11; see also Toufexis, *supra* note 150.

153. Carol Christian, *Prosecution Witness in Yates Trial Assailed*, Hous. CHRON., Apr. 30, 2002, at A17 (referring to Dietz as the "prosecution's star witness" in the Yates case).

154. See App. 4 at 99, tr. at 15; Transcript of Park Dietz's interview with Andrea Yates (Nov. 7, 2001) [hereinafter Dietz-Yates interview] (full transcript on file with author).

155. See generally App. 4.

156. See *id.* at 97-98, tr. at 1-7.

157. See *id.* at 98, tr. at 6-7.

158. See *id.* at 98-99, tr. at 7-8.

159. See *id.* at 99, tr. at 8.

ioral sciences, as well as president and founder of Threat Assessment Group, Inc. (TAG), which specializes in the prevention of workplace violence.<sup>160</sup> Before arriving in Houston to testify in the Yates case, Dietz mailed his business brochure (describing his companies and the types of cases on which they work) to a wide range of members of Houston's legal community—prosecutors, defense attorneys, attorneys specializing in premises liability for violent crime, and lawyers representing elder abuse victims.<sup>161</sup> Although the Yates defense brought forth evidence of Dietz's brochure distribution during cross-examination in an effort to portray Dietz as a "professional testifier,"<sup>162</sup> Dietz did not seem apologetic.<sup>163</sup> Nor did such a revelation appear to dent the perceived validity of his testimony.

### 1. A Desire to Emphasize "Facts"

Media articles about Dietz claim he is known for emphasizing "facts" rather than "theoretical conjecture" when evaluating a case.<sup>164</sup> Indeed, both Dr. Jonas Rappoport, a renowned professor of Dietz's at Johns Hopkins Medical School,<sup>165</sup> as well as Roger Adelman, one of the prosecutors in the Hinckley case,<sup>166</sup> credit Dietz's precision and "focus on the facts" as major contributions Dietz has brought to modernizing the field of forensic psychiatry.

In line with this facts-driven orientation, Dietz seems to be more concerned with the physical evidence linked to a crime than with the defendant's history that can be acquired in an interview.<sup>167</sup> According to Dietz, for example, interviews with defendants have typically "been the linchpin of forensic assessments"; yet, there are "serious risks" associated with them because the "[n]atural human techniques for gaining information from an interview unthinkingly cut corners by suggesting answers or guessing at the answer or offering multiple choices."<sup>168</sup> Such leading or suggestive procedures are comparable to crime scene evidence that has been contaminated or corrupted.<sup>169</sup> Dietz favors instead the second source of mental evidence, which includes examining the crime scene, analyzing autopsies and weapons, and interviewing witnesses to the crime.<sup>170</sup> Although "the ideal" would be to have both types of evidence when making an evaluation, Dietz has stated that, "[i]f I had to choose between

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160. See *id.* at 124-25, tr. at 147-50; see also Park Dietz & Associates, Inc., website at <http://www.parkdietzassociates.com> (last visited Feb. 2, 2003) (providing a complete description of Dietz's businesses).

161. See App. 4 at 124-25, tr. at 150-53.

162. See *id.* at 125, tr. at 151-52.

163. See generally App. 4.

164. Johnson, *supra* note 151, at 43; see also Dale Keiger, *The Dark World of Park Dietz*, JOHNS HOPKINS MAG., Nov. 1994, available at <http://www.jhu.edu/~jhumag/1194web/dietz.html> (stating that "Dietz is known for stringent analysis of the facts of a case and an avoidance of opinion when on the witness stand").

165. Johnson, *supra* note 151, at 43.

166. Keiger, *supra* note 164 (citing Roger M. Adelman, a prosecutor on the Hinckley case and now an attorney with Kirkpatrick & Lockhart in Washington, D.C.).

167. See Johnson, *supra* note 151, at 46.

168. Toufexis, *supra* note 150.

169. *Id.*

170. *Id.*

the interview [with the defendant] only or everything except the interview as a means of getting to the truth, I'd prefer everything except the interview because it would get me to the truth more often."<sup>171</sup>

Dietz's apparent stress on facts,<sup>172</sup> combined with what even Rappeport views as a "rigid" approach towards defendants,<sup>173</sup> has prompted criticism. According to an article about Dietz in *Johns Hopkins Magazine*, "[s]ome forensic psychiatrists" have accused him of presenting "mere informed opinion as solid fact, and [complain] that his standard of criminal responsibility is harsh and unforgiving of mentally ill defendants."<sup>174</sup> For example, during his testimony in the Yates case, Dietz indicated that because Andrea claimed that Satan, rather than God, told her to kill her children, she knew her actions were wrong.<sup>175</sup> Andrea also failed to act in a way a loving mother would if she really thought she was saving her children from hell by killing them. As Dietz stated, "I would expect her to comfort the children, telling them they are going to be with Jesus or be with God, but she does not offer words of comfort to the children."<sup>176</sup> However, there appears to be no empirical support for this kind of interpretation of the deific decree doctrine, if in fact that is what Dietz was referencing.<sup>177</sup> Rather, if Dietz's explanation has any source at all, it seems to derive from the centuries-old, Judeo-Christian origins of the doctrine itself.<sup>178</sup> As one legal critic asked in response to Dietz's comments, "Is one to infer that it is somehow more loving to invoke the name of Jesus while you drown your children than to drown them without any religious commentary?"<sup>179</sup> In other words, Dietz appears to be stressing religion, not facts, a focus more aligned with Southern Bible belt culture<sup>180</sup> rather than with a medical assessment of Andrea's mental state.

Even Dietz's supporters have admitted that his inflexible approach may prevent him from being able (or willing) to comprehend "some of the psychological nuances of human behavior."<sup>181</sup> According to Rappeport, a strong advocate,<sup>182</sup> Dietz has the capability to understand and apply knowledge of human behavior, he simply chooses not to.<sup>183</sup> As Rappeport explained, "I have a suspicion he may not like to do that. So he may find himself more frequently on the side of the prosecutor, who doesn't like to do those things either."<sup>184</sup> Such an omission is a troubling handicap in a field where "[f]ifty percent or more of

171. *Id.*

172. See Johnson, *supra* note 151, at 48.

173. See *id.*

174. See Keiger, *supra* note 164.

175. See App. 4 at 109, tr. at 86; see also Associated Press, *Doctor: Yates Suffered Mental Illness*, Mar. 8, 2002, available at [http://www.courttv.com/trials/yates/030802-illness\\_ap.html](http://www.courttv.com/trials/yates/030802-illness_ap.html).

176. See App. 4 at 114, tr. at 106.

177. Morris & Haroun, *supra* note 95, at 1003.

178. See *id.*

179. Susan Jacoby, *Needed: Guilty but Insane Option*, NEWSDAY, Mar. 14, 2002, at A35.

180. Steiker, *supra* note 9, at 124-25; see also Professor to Discuss Death Penalty, SAN ANGELO STANDARD-TIMES, Jan. 14, 2003, at A3 (referring to the Bible belt culture in Texas).

181. See Johnson, *supra* note 151, at 48.

182. See *id.* at 46 (noting that Rappeport "recalls that when he discovered Dietz at Hopkins his feeling was one of 'love at first sight,' for 'Park consumed books, consumed information'").

183. See *id.* at 48.

184. *Id.*

medicine is emotional.”<sup>185</sup> It is particularly problematic given that the cases that typically involve Dietz’s testimony often turn on the very “nuances” that Dietz discounts.

Indeed, in media interviews<sup>186</sup> and his testimony in the Yates case,<sup>187</sup> Dietz has made clear that he does not treat patients in a psychiatry practice. This lack of engagement with patients is “rare” among medical expert witnesses.<sup>188</sup> Rather, Dietz opts to concentrate on research and one-time interviews with criminal defendants.<sup>189</sup> Yet, such a view of the psychiatric world is distorted. For example, it is difficult to comprehend how Dietz can evaluate an individual’s normality or abnormality if he only engages in short-term interviews with highly abnormal people. By encountering briefly only the most extreme criminal cases, all Dietz sees is pathology. He has no “control group” as a comparison, no in-depth evaluations of individuals from whom he can learn nuances. Such an approach may explain additional criticisms concerning where Dietz draws the line for distinguishing sanity from insanity. According to Fred S. Berlin, associate professor of psychiatry at Johns Hopkins and one of the defense’s psychiatric experts in the Jeffrey Dahmer case, Dietz’s line is too stringent. “He has a high threshold for evidence that tends to suggest impairment. A narrow range for what he defines as psychiatric disorder.”<sup>190</sup>

Consistent with this view, in the Yates case Dietz minimized the defense expert witnesses’ testimony that Andrea had suffered years of delusions, auditory hallucinations, and visions of violence.<sup>191</sup> Instead, Dietz claimed that Andrea had, at most, experienced “obsessional intrusive thoughts.”<sup>192</sup> Yet, contrary to other high profile defendants pleading insanity, Andrea had a substantial and documented history of mental illness before she killed her children.<sup>193</sup> Not only had she twice attempted suicide, she had also been hospitalized and prescribed anti-psychotic drugs after the birth of her fourth and fifth children.<sup>194</sup> The de-

185. *Id.* For further discussion of the significance of understanding and applying knowledge of human behavior in the field of psychiatry, see generally WILLARD GAYLIN, *THE KILLING OF BONNIE GARLAND* 252 (1982) (explaining that two key axioms of psychiatry are, first, that “[e]very individual act of human behavior is the resultant of a multitude of emotional forces and counterforces” and, second, “[t]hese forces and counterforces are shaped by past experience”).

186. See Johnson, *supra* note 151, at 43, 48 (noting that although Dietz’s colleagues often have clinical practices, Dietz “himself has no interest in treating patients” and that “Park never treats anybody and has no qualms about it”).

187. See generally App. 4.

188. Ciccone, *Expert Testimony*, *supra* note 42, at 798. Commentators on psychiatric expert testimony emphasize the importance of psychiatric experts engaging in a clinical practice:

The medical expert witness usually engages in [testifying] as a part of a larger clinical practice. While some experts have given up clinical work, this is rare. Medical experts who have not actively engaged in their discipline or who have given it up may find their credibility questioned in court. Medical experts have the ethical obligation to inform the court or attorney hiring them of the status of their clinical practice.

*Id.*

189. See Toufexis, *supra* note 150.

190. Keiger, *supra* note 164.

191. See App. 4 at 105, tr. at 68-70.

192. See *id.*, tr. at 69.

193. See App. 1 (June 17, 1999; July 21, 1999; Mar. 31, 2001; May 4, 2001) at 62, 64, 67-68.

194. See *id.* (June 17, 1999; June 19, 1999; July 20, 1999; Mar. 31, 2001) at 62-64, 67-68.

fense could call experts who had actually treated Andrea, some repeatedly,<sup>195</sup> in sharp contrast to Dietz's relatively brief interview. As one scholar on expert testimony emphasizes, "[t]he legal system assumes that the treating doctor is more credible than a nontreating doctor"; therefore, the treating physician "is frequently sought to provide expert testimony."<sup>196</sup>

Nonetheless, Dietz's effectiveness as a witness appears to be due to his alleged emphasis on fact. Because jurors received conflicting expert testimony during the Yates trial, minimal statutory guidance, and unclear stories from both the prosecution and defense, they were left with little to rely on other than the supposed "facts."<sup>197</sup> Compounding this dilemma, the multiple defense psychiatrists gave somewhat contradictory analyses of Andrea's mental state,<sup>198</sup> presumably in part because she had been treated or assessed by a number of them during different stages of her illness. Such a multiple-theory defense narrative contrasted with the more uniform "factual" narrative presented by Dietz. Given a choice, Dietz's story may have been the preferred alternative; the jury could base a decision on something tangible—"facts"—rather than confusion.

## 2. A Prosecutorial Bent

Almost immediately, Dietz's testimony and post-trial commentary about the Yates case sparked notoriety for the views he expressed both inside and outside the courtroom. In an interview with the *New York Times* six weeks after his trial testimony, Dietz stressed that his involvement in the Yates case was "troubling," both "professionally and personally."<sup>199</sup> As he explained, "[i]t was obvious where public opinion lay, it was obvious she was mentally ill, it was obvious where professional organizations would like the case to go."<sup>200</sup> Therefore, while "[i]t would have been the easier course of action to distort the law a little, ignore the evidence a little, and pretend she didn't know what she did was wrong," it also would have been "wrong . . . to stretch the truth and try to engineer the outcome" in that way.<sup>201</sup>

Dietz also tried to justify his career-long tendency to appear primarily for the prosecution. According to Dietz, prosecutors, like good forensic psychiatrists, strive "to seek truth and justice" and therefore to make available all the information important in a case.<sup>202</sup> In contrast, defense attorneys attempt to help their clients—a goal that conflicts with a thorough search for data. "[O]ften there are pieces of evidence that are not in their client's interest to have disclosed or

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195. See *id.* (Andrea met with Dr. Flack throughout the period of June 19, 1999 to June 24, 1999; Dr. Starbranch from July 1, 1999 to Jan. 2000; and Dr. Saeed from Apr. 1, 2001 to June 18, 2001) at 62-70.

196. Ciccone, *Expert Testimony*, *supra* note 42, at 797.

197. See Cassel, *supra* note 84.

198. See *infra* notes 461-69.

199. See Toufexis, *supra* note 150.

200. *Id.*

201. *Id.*

202. *Id.*; see also Keiger, *supra* note 164 (noting that Dietz "almost always appears in court as a witness for the prosecution"); *Interview: Dr. Park Dietz*, *supra* note 148 (commenting on how Dietz's approach benefits prosecutors).

produced.”<sup>203</sup> Of course, Dietz’s statements imply that defense attorneys and their witnesses want to distort information in some way and shield the truth.<sup>204</sup>

The irony of Dietz’s points, however, were spotlighted a week later by Andrea’s attorneys. They discovered a factual error that Dietz had made during cross-examination. As the next section discusses, their research showed that Dietz had testified incorrectly about the existence of a television episode about postpartum depression that never aired.<sup>205</sup>

### 3. A Mistake in Testimony

Dietz is a technical advisor to two television shows: *Law & Order* and *Law & Order Criminal Intent*. In his advisory capacity, he has viewed nearly three hundred episodes of both shows.<sup>206</sup> During the Yates trial, Dietz mistakenly testified that, shortly before Andrea killed her children, *Law & Order* aired an episode involving a postpartum depressed mother who successfully won an insanity appeal after drowning her children in a bathtub.<sup>207</sup> The episode never existed.<sup>208</sup> When Dietz learned of his error, he wrote prosecutors Joe Owmbly and Kaylynn Williford and informed them that he had confused the insanity episode he testified about with other *Law & Order* episodes and infanticide cases. Dietz’s mistake about such a fact, however, may be part of the grounds for Yates’s appeal.<sup>209</sup> It is not a stretch to think the jury may have been affected by Dietz’s implication that Andrea was somehow influenced by the show.

Dietz’s statements about the “truth seeking” differences between the prosecution and the defense were also problematic in other ways totally beyond his control and, presumably, his awareness. For example, trial testimony revealed that the defense was not able to acquire copies of particular documents, including Andrea’s police offense report. George Parnham, Andrea’s attorney, was allowed only to read her police report but not to photocopy it.<sup>210</sup> Therefore, Parnham resorted to taking notes on the report, based only on what he could remember of it. As one defense expert later revealed, having only Parnham’s notes on Andrea’s report put the expert “at a real disadvantage.”<sup>211</sup>

Dietz also claimed that the defense experts asked “shocking examples of leading questions” of Andrea and provided only partial, and biased, videotapes of their interviews with her.<sup>212</sup> Predictably, his accusation prompted a response. According to Lucy Puryear, a Houston psychiatrist who testified for Andrea’s

203. Toufexis, *supra* note 150.

204. Christian, *supra* note 153.

205. *Id.*

206. *Id.*

207. *See* App. 4 at 127, tr. at 161.

208. Christian, *supra* note 153.

209. Andrew Gumbel, *Life Sentence for Texan Mother Who Drowned Her Five Children; Andrea Yates: A History of Mental Health Problems*, THE INDEPENDENT (London), Mar. 16, 2002, at 18 (explaining that Dietz’s mistake about the *Law & Order* episode might be an issue on appeal and that Joseph Owmbly, the lead prosecutor, “insinuated that Mrs. Yates—a fan of the show—might have hatched a plot for infanticide based on what she saw on TV”).

210. *See* App. 4 at 130, tr. at 171.

211. Christian, *supra* note 153.

212. *See* Toufexis, *supra* note 150.

defense, Dietz did the same.<sup>213</sup> Puryear added that Dietz edited his eight hours of videotaped interviews with Andrea and only “showed the jury portions that supported his testimony.”<sup>214</sup>

Such media debates simply seem to accentuate the general problems associated with incorporating psychiatric testimony in an adversarial process, as well as the weaknesses of the profession itself. Legal commentators emphasized the extent to which both sides in the Yates case differed in their conclusions about Andrea’s mental state given that they were purportedly examining the same evidence.<sup>215</sup> As the following sections suggest, however, the backgrounds of the experts appeared to have an impact on what kind of evidence they believed was most significant and why.

## B. Dietz’s Limitations in Expertise and Investigation

This section examines the extent of Park Dietz’s background and experience for testifying in a case involving a defendant with an undisputed history of postpartum depression and postpartum psychosis. As one scholar on expert witnesses has emphasized, “[m]edical professionals who undertake the role of expert witnesses are generally expected . . . to be knowledgeable and experienced in the area in which they are functioning as a medical expert.”<sup>216</sup>

### 1. Postpartum Depression and Postpartum Psychosis

The Yates trial revealed the degree to which Dietz was unfamiliar with patients diagnosed with postpartum depression or postpartum psychosis and his admitted void in treating patients.<sup>217</sup> This observation is not meant to elevate the psychiatric classification of postpartum disorders to a level of scientific precision and sophistication that it does not deserve.<sup>218</sup> Rather, this section makes clear that there is still much to be learned about postpartum disorders and how much they can justifiably mitigate criminal culpability, if at all. At the same time, what is known medically about the disorders—especially their neurobiological aspects—should not be ignored. Two postpartum experts highlighted the problem of such informational inadequacy specifically with respect to the prosecution’s approach in the Yates case: “The real challenge for psychiatry is to educate the legal profession and juries about the physiological underpinnings of postpartum disorders and other psychoses . . . and, ultimately, to encourage verdicts based on facts.”<sup>219</sup>

Of course, Park Dietz was not responsible for such a lack of education. It is not the role of the expert witness to provide answers to questions that are never asked or to draw conclusions without a foundation. Andrea’s defense attorneys could have more aggressively revealed Dietz’s gaps and confronted him with

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213. Christian, *supra* note 153.

214. *Id.*

215. See *infra* Part VI.A., The Overall Defense and Prosecution Perspective, and accompanying notes.

216. Ciccone, *Expert Testimony*, *supra* note 42, at 797.

217. See *supra* notes 186-90 and accompanying text.

218. See *infra* notes 230-33 and accompanying text.

219. Meyer & Spinelli, *supra* note 77, at 176.

the history of Andrea's illnesses that Dietz bypassed in his evaluations. Nonetheless, without a fuller expertise on postpartum issues, Dietz's story about Andrea offered a much simpler mental landscape—and a greater level of speculation—than may have been warranted given her background.

Direct and cross examinations in the Yates trial made clear that Dietz has been asked to consult on an “unusually high proportion” of cases concerning mothers who kill their children.<sup>220</sup> Yet, according to his testimony, the last time he ever treated a female patient with postpartum depression was twenty-five years ago (in 1977).<sup>221</sup> Nor was Dietz “sure” that he ever treated a patient for postpartum depression with “psychotic features.”<sup>222</sup> Dietz conceded that he stopped treating patients totally “many many years ago,” in “1981 or 1982”<sup>223</sup> and that he has no expertise in women's mental health.<sup>224</sup> Dietz's error concerning the showing of a Law & Order episode on postpartum depression<sup>225</sup> came about when Parnham was cross-examining him to assess two issues: the sources of Dietz's income, but also whether Dietz had any more expertise in postpartum disorders, even at the level of consulting for television shows, than what he indicated in his testimony on direct examination.<sup>226</sup> It appears Dietz did not have more background because he did not offer any information other than his consultancy on a nonexistent show. Such inexperience does not comport with accepted diagnostic principles of psychiatry.<sup>227</sup>

Dietz's lack of expertise in postpartum depression and postpartum psychosis is striking given the psychiatric community's recognition of postpartum disorders<sup>228</sup> and the acceptance by both sides that Andrea was afflicted with one.<sup>229</sup> The disorders are included in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM), published by the American Psychiatric Association, and now in its fourth (text revised) edition (DSM-IV-TR).<sup>230</sup> As courts and professionals have noted, “[t]he DSM is often referred to as ‘the psychiatric profession's diagnostic Bible.’”<sup>231</sup> DSM-IV-TR also clearly recognizes the link between postpartum-related mental disorder and infanticide in the context of delusions.<sup>232</sup> Notably,

220. See App. 4 at 99, tr. at 21. Although the transcript reads “usually high proportion,” it is logical to assume that Dietz either meant to say “unusually high” or said “unusually high” and the transcript omitted the “un.”

221. See *id.* at 124, tr. at 148.

222. See *id.*, tr. at 149.

223. See *id.*, tr. at 148.

224. See *id.* at 125-26, tr. at 154.

225. See *supra* notes 206-09 and accompanying text.

226. See App. 4 at 127, tr. at 161.

227. See generally JAMES MORRISON & RODRIGO A. MUNOZ, BOARDING TIME: A PSYCHIATRY CANDIDATE'S GUIDE TO PART II OF THE ABPN EXAMINATION (2d ed. 1996) (advising candidates to avoid discussing with examiners diagnoses of which they have no knowledge or experience).

228. See *infra* note 232.

229. See *supra* notes 16, 116, 144 and accompanying text.

230. DSM-IV-TR, *supra* note 124, at xxiii. The DSM, first published in 1952, has had periodic revisions, starting in 1968 (DSM-II), 1980 (DSM-III), 1987 (DSM-III-R), 1994 (DSM-IV), and 2000 (DSM-IV-TR). *Id.* at xxiv-vi.

231. Morris & Haroun, *supra* note 95, at 1023 (citations omitted).

232. DSM-IV-TR, *supra* note 124, at 422-23. As one legal commentator explains, symptoms of postpartum psychosis typically include delusions and hallucinations. The “plasticity” of the psycho-

however, postpartum psychosis is not presently treated as an individual diagnostic classification in the DSM-IV-TR. Rather, the symptoms are categorized according to the established criteria used to diagnose psychosis (for example, major depressive, manic, or mixed episode). The “postpartum onset specifier” applies if symptoms occur within four weeks after childbirth.<sup>233</sup>

## 2. Andrea’s Postpartum Risk Factors and Life Stressors

It appears that Dietz never really adequately investigated or acknowledged Andrea’s postpartum risk factors—most particularly in the context of the postpartum period’s “unique . . . degree of neuroendocrine alterations and psychosocial adjustments,” which the DSM emphasizes.<sup>234</sup> In other words, the medical literature stresses that the risk factors for postpartum disorders cover a broad scope of biological, psychological, and social influences. These factors include an individual’s personal and family history of depression, biochemical imbalances, recent stressful events, marital conflict, and perceived lack of support from the partner, family, or friends.<sup>235</sup>

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sis is manifested by the pattern of its symptoms—“delusions and hallucinations may abruptly surface, followed by periods of deep depression, only to be replaced with psychoses.” Judith Macfarlane, *Criminal Defense in Cases of Infanticide and Neonaticide*, in Spinelli, *supra* note 43, at 133, 136. By the time psychiatric evaluations and trials occur, many defendants have suffered memory loss during the psychosis and are unable to even describe to a psychiatrist or jury what their thought processes were at the time of the crime. *Id.* at 163-64. Yet, the psychosis has passed, so defendants can be found competent to stand trial. Meyer & Spinelli, *supra* note 77, at 173.

233. Misri et al., *Postpartum Psychosis*, *supra* note 43. The DSM-IV-TR classification for “Postpartum Onset Specifier” is as follows:

Symptoms that are common in postpartum-onset episodes, though not specific to postpartum onset, include fluctuations in mood, mood lability, and preoccupation with infant well-being, the intensity of which may range from overconcern to frank delusions. The presence of severe ruminations or delusional thoughts about the infant is associated with a significantly increased risk of harm to the infant.

Postpartum-onset mood episodes can present either with or without psychotic features. Infanticide is most often associated with postpartum psychotic episodes that are characterized by command hallucinations to kill the infant or delusions that the infant is possessed, but it can also occur in severe postpartum mood episodes without such specific delusions or hallucinations. Postpartum mood (Major Depressive, Manic, or Mixed) episodes with psychotic features appear to occur in from 1 in 500 to 1 in 1,000 deliveries and may be more common in primiparous women. The risk of postpartum episodes with psychotic features is particularly increased for women with prior postpartum mood episodes but is also elevated for those with a prior history of a Mood Disorder (especially Bipolar I Disorder). Once a woman has had a postpartum episode with psychotic features, the risk of occurrence with each subsequent delivery is between 30% and 50%. There is also some evidence of increased risk of postpartum psychotic mood episodes among women without a history of Mood Disorders with a family history of Bipolar Disorders. . . .

A past personal history of nonpostpartum Mood Disorder and a family history of Mood Disorders also increase the risk for the development of a postpartum Mood Disorder. The risk factors, recurrence rates, and symptoms of postpartum-onset Mood Episodes are similar to those of nonpostpartum Mood Episodes. However, the postpartum period is unique with respect to the degree of neuroendocrine alterations and psychosocial adjustments, the potential impact of breast-feeding on treatment planning, and the long-term implications of a history of postpartum Mood Disorder on subsequent family planning.

DSM-IV-TR, *supra* note 124, at 422-23.

234. DSM-IV-TR, *supra* note 124, at 423.

235. Misri et al., *Postpartum Psychosis*, *supra* note 43; Misri et al., *Postpartum Blues*, *supra* note 43.

Andrea experienced all of the postpartum risk factors that the DSM mentions.<sup>236</sup> She was also subject to a host of family and environmental life stressors shown to be linked to postpartum depression and postpartum psychosis.<sup>237</sup> Dietz only occasionally alluded to these stressors if he mentioned them at all in his testimony. Even if it could be argued that the direct and cross examinations of Dietz did not prompt further references to Andrea's disorders, it would be expected that they would be part of Dietz's evaluation of Andrea independent of his courtroom testimony.

Andrea's stressors were numerous. First, over the course of her marriage to Rusty (during which she was nearly always either pregnant or breastfeeding), Andrea consistently demonstrated DSM-listed criteria for postpartum mood disorder: "fluctuations in mood, mood lability, and preoccupation with infant well-being."<sup>238</sup> Like the DSM specification, these feelings "ranged from overconcern to frank delusions"<sup>239</sup> and they also took the form of suicide attempts related to the other circumstances in Andrea's life—uprooted living conditions and transiency, home schooling her five children, her father's death, depressive illnesses throughout her family, Rusty's own bizarre behavior and pressure for more children, as well as Andrea's increasing obsession with religious doctrine, particularly as it was pitched by Michael Woroniecki and his wife, Rachel.<sup>240</sup> As the DSM notes, "[t]he presence of severe ruminations or delusional thoughts about the infant is associated with a significantly increased risk of harm to the infant."<sup>241</sup> Part IV considers in further detail how Andrea wove such delusional thoughts into a highly stressed life that seemed to spur the thoughts all the more.

#### IV. ANDREA YATES'S HISTORY OF POSTPARTUM DISORDERS

##### A. The Early Years of Andrea's Marriage

Andrea's postpartum difficulties appeared with her first pregnancy. Soon after Noah's birth in 1994,<sup>242</sup> for example, Andrea experienced hallucinations—a striking vision of a knife and her stabbing someone. She dismissed the image and never revealed it to anyone<sup>243</sup> until after her arrest, when she told Rusty.<sup>244</sup> As research shows, postpartum depressed or psychotic women often feel ashamed or embarrassed to admit to others their thoughts about harming their infants.<sup>245</sup>

When Andrea became pregnant a second time in 1995 (with John), she gave up swimming and jogging and also saw less of her friends.<sup>246</sup> Her lifestyle

236. See *supra* note 233.

237. See *infra* Part IV. Andrea Yates's History of Postpartum Disorders, and accompanying notes.

238. DSM-IV-TR, *supra* note 124, at 422.

239. *Id.*

240. See Roche, *supra* note 1, at 48. See generally App. 1.

241. DSM-IV-TR, *supra* note 124, at 422.

242. See App. 1 (Feb. 26, 1994) at 61.

243. See *id.*

244. See Roche, *supra* note 1, at 45-46.

245. See Meyer & Spinelli, *supra* note 77, at 181; Misri et al., *Postpartum Blues*, *supra* note 43.

246. See App. 1 (Dec. 15, 1995) at 61.

switched yet again in 1996, when Rusty was offered work on a six-month NASA-related project in Florida—an event that prompted the leasing of their four-bedroom suburban house and a drive to Florida in a thirty-eight foot trailer.<sup>247</sup> That trailer would become their “home” in a recreational-vehicle community where Andrea would care for Noah and John while Rusty worked.<sup>248</sup> In Florida, Andrea miscarried but then became pregnant a third time just when Rusty had completed his job and was ready to move back to Houston.<sup>249</sup>

The return to Houston did not mean re-inhabiting their house even though in 1997 Andrea gave birth to a third child, Paul.<sup>250</sup> Rusty had other ideas. In an effort to live “light” and “easy,” the Yateses rented a lot for their trailer.<sup>251</sup> By 1998, after several months of trailer living, Rusty’s “easy living” philosophy took a new twist. He learned that a traveling evangelist, Michael Woroniecki, whose advice had inspired Rusty in college, was selling a motor home that Woroniecki had converted from a 1978 Greyhound bus.<sup>252</sup> Woroniecki, his wife Rachel, and their children had used the 350-square feet of bus for home and travel for their mobile lifestyle.<sup>253</sup> Because Andrea and Noah preferred the bus to the trailer, Rusty bought it. Noah and John slept in the luggage compartment, while Andrea, Rusty, Paul, and now, Luke, who was born in 1999, slept in the cabin.<sup>254</sup>

While her brood expanded, Andrea also became devoted to helping her father, who now had Alzheimer’s disease. This task was overwhelming for Andrea.<sup>255</sup> At the same time, Andrea became further isolated from everyone. When she did choose to see people, she always visited them, never reciprocating by inviting them to the trailer.<sup>256</sup>

Rusty’s role in Andrea’s increasing aloneness, oddity of lifestyle, religious obsession, and continual state of pregnancy should not be downplayed with respect to any facet of Andrea’s behavior.<sup>257</sup> And it may never be known to what extent Andrea’s pregnancies were based on a mutual decision with Rusty or primarily a product of Rusty’s desire for a large family. A number of people, including Andrea’s mother and her friend Debbie Holmes, suggested Rusty was a dominating force in the Yates family, including the decision to have babies.<sup>258</sup>

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247. *See id.* (Early-mid 1996) at 61.

248. *See id.* (Early-mid 1996, Oct. 12, 1996, Nov. 1996, Dec. 1996) at 61.

249. *See id.* (Nov. 1996, Dec. 1996) at 61.

250. *See id.* (Sept. 13, 1997) at 61.

251. *See id.* (May 1998) at 62.

252. *See id.*

253. *See id.*

254. *See id.* (Oct. 1998, Feb. 15, 1999) at 62.

255. *See id.* (Mar. - May 1999) at 62.

256. *See id.*

257. Indeed, at one point the Harris County district attorney was examining whether Rusty was in any way culpable for the killings because he had left Andrea alone with the children. *See Associated Press, DA Looks at Russell Yates’ Conduct*, Mar. 26, 2002, available at [http://www.courttv.com/trials/yates/032602\\_ap.html](http://www.courttv.com/trials/yates/032602_ap.html).

258. *See infra* notes 299-301 and accompanying text; *see also Roche, supra* note 1, at 48.

## B. The Start of Andrea's Breakdown

On June 16, 1999, Andrea called Rusty at work, sobbing and hysterical. He returned to find her shaking uncontrollably and biting her fingers.<sup>259</sup> His efforts to calm her to no avail, Rusty took Andrea to her parents' home that evening.<sup>260</sup> The next day, while Andrea's mother was napping and Rusty was out doing errands, the full force of Andrea's troubles became unmistakably clear. She attempted suicide by taking forty pills of her mother's antidepressant medication.<sup>261</sup> An unconscious Andrea was rushed by ambulance to Methodist Hospital, with Rusty following behind.<sup>262</sup>

Andrea told the staff at Methodist Hospital that she had consumed the pills to "sleep forever," but afterwards she felt guilty because she had her "family to live for."<sup>263</sup> At the same time, her recovery was slow. According to notes taken by a hospital psychiatrist and a social worker, Andrea was evasive about the reasons for her suicide attempt and deflected questions.<sup>264</sup> Although Andrea was still depressed, the hospital discharged her for "insurance reasons," the explanation written on her medical chart. The psychiatrist prescribed Zoloft, an antidepressant, and Rusty took Andrea back to her parents' home to rest.<sup>265</sup>

Andrea did not like taking the medication, however, and her condition only worsened.<sup>266</sup> She would stay in bed all day and self-mutilate. At one point, she scratched four bald patches on her scalp, picked sores in her nose, and obsessively scraped "score marks" on her legs and arms.<sup>267</sup> Later, she would tell psychiatrists that during this time, she saw visions and heard voices, telling her to get a knife. She also watched a person being stabbed, although she would not identify the victim.<sup>268</sup> At the same time, Andrea refused to feed her children or nurse her baby Luke, claiming that they were "all eating too much."<sup>269</sup> Such delusions and thoughts about her children are consistent with the criteria listed for postpartum disorders in the DSM.<sup>270</sup>

It was only after Andrea's attempted suicide that her relatives discovered the extent of her family history of mental illness: Andrea's brother and sister had ongoing treatment for depression, another brother was bipolar, and in hindsight, her father also suffered from depression.<sup>271</sup> According to the DSM, this

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259. See App. 1 (June 16, 1999) at 62.

260. See *id.*

261. See *id.* (June 17, 1999) at 62.

262. See *id.*

263. See *id.* (June 18, 1999) at 62.

264. See *id.*

265. See *id.* (June 19, 1999, June 20, 1999, June 21, 1999, June 22, 1999, June 23, 1999, June 24, 1999) at 62-63.

266. See *id.* (June 18, 1999, July 1, 1999, July 2-19, 1999) at 62-64.

267. See *id.* (July 2-19, 1999) at 63-64.

268. See *id.*

269. See *id.*

270. See DSM-IV-TR, *supra* note 124, at 422.

271. See App. 1 (July 2-19, 1999) at 63-64.

family history of mental disorder (particularly bipolar disorder),<sup>272</sup> along with Andrea's pre- and post-pregnancy experiences with depression,<sup>273</sup> are all factors that would heighten the likelihood of postpartum psychotic features. As the DSM explains, "[o]nce a woman has had a postpartum episode with psychotic features, the risk of recurrence with each subsequent delivery is between 30% and 50%."<sup>274</sup>

At different times, Andrea also experienced bizarre delusions and hallucinations. She believed that there were video cameras in the ceilings watching her in various rooms in the house and that television characters were communicating with her. She told Rusty of these hallucinations; however, neither of them informed Andrea's doctors, even though Andrea was continually asked whether she had hallucinations.<sup>275</sup>

Of all of her family members, Andrea seemed to suffer the most and her condition continued to deteriorate. The day before she had an appointment with one of her psychiatrists, Eileen Starbranch, Rusty found Andrea in the bathroom looking at the mirror with a knife at her throat. Rusty had to grab the knife away.<sup>276</sup> When Rusty told Starbranch of the incident, she insisted that Andrea be hospitalized again, this time at Memorial Spring Shadows Glen, a private facility in Houston.<sup>277</sup>

The initial results of this hospitalization were disastrous. Andrea was virtually catatonic for ten days.<sup>278</sup> According to clinicians, catatonia is an objective sign of mental disorder whether or not an individual reveals what he or she is thinking.<sup>279</sup> It was also only during Andrea's stay at Memorial Spring Shadows Glen that there would ever be any record suggesting that she experienced hallu-

272. DSM-IV-TR, *supra* note 124, at 423 ("There is also some evidence of increased risk of postpartum psychotic mood episodes among women without a history of Mood Disorders with a family history of Bipolar Disorders."); *see also supra* note 235 and accompanying text.

273. DSM-IV-TR, *supra* note 124, at 422 ("The risk of postpartum episodes with psychotic features is particularly increased for women with prior postpartum mood episodes but is also elevated for those with a prior history of a Mood Disorder (especially Bipolar I Disorder).").

274. *Id.* at 423.

275. *See* App. 1 (July 2-19, 1999) at 63-64.

276. *See id.* (July 20, 1999) at 64.

277. *See id.* (July 21, 1999) at 64.

278. *See id.* (July 25, 1999) at 64.

279. Telephone Interview with Shari Lusskin, M.D., Director of Reproductive Psychiatry, Clinical Assistant Professor, New York University School of Medicine (Dec. 15, 2002). Under the DSM, the criteria for catatonic features specifier include a clinical picture dominated by at least two of the following features:

- (1) motoric immobility as evidenced by catalepsy (including waxy flexibility) or stupor
- (2) excessive motor activity (that is apparently purposeless and not influenced by external stimuli)
- (3) extreme negativism (an apparently motiveless resistance to all instructions or maintenance of a rigid posture against attempts to be moved) or mutism
- (4) peculiarities of voluntary movement as evidenced by posturing (voluntary assumption of inappropriate or bizarre postures), stereotyped movements, prominent mannerisms, or prominent grimacing
- (5) echolalia or echopraxia

DSM-IV-TR, *supra* note 124, at 418.

cinations.<sup>280</sup> This record was based on a doctor's report and observations by the doctor's assistant.<sup>281</sup>

Starbranch gave Andrea a multi-drug injection that immediately improved Andrea's behavior, according to Rusty.<sup>282</sup> After a sound sleep, Andrea seemed much more like the person he had first met and they had in the evening what he thought was one of their best conversations.<sup>283</sup> Only later did Andrea assert that she considered the injection a "truth serum" that led her to lose self-control in a way she abhorred.<sup>284</sup> Andrea's view of the injection as a "truth serum" could be considered yet one more bizarre delusion on her part.<sup>285</sup>

When Andrea returned to her family after treatment, "home" was neither her parents' house (which was too small) nor the bus, which her parents considered unhealthy for her and the children. With her parents' urging, Rusty, a well-salaried (\$80,000 a year) project manager at NASA, bought a three-bedroom, two-bath house in a tree-lined, residential neighborhood.<sup>286</sup> The house even had a place to park the bus, which was still very important to Rusty. In the more serene surroundings, Andrea apparently prospered—swimming laps at dawn, baking and sewing, playing with her children, and fostering an environment for home schooling,<sup>287</sup> which Rusty encouraged despite the past stress on Andrea.<sup>288</sup> At this point, Andrea admitted to Rusty that she had "failed" at their life in the bus; this new phase in their life was a chance to succeed.<sup>289</sup>

During this period, the family was engaging in three nights per week of Bible study in the living room because Rusty did not like any of the churches in their area. Again, the views of the bus-selling traveling minister Michael Woroniecki would come to have a profound effect on the lives of Andrea and Rusty.<sup>290</sup> Through Woroniecki, Rusty came to doubt organized religion, even though Rusty was not in complete agreement with Woroniecki's views.<sup>291</sup> Andrea was another story, however. Woroniecki's "repent-or-burn zeal"<sup>292</sup> captivated her and she corresponded with Woroniecki and his wife for years after she and Rusty bought their bus.<sup>293</sup> Indeed, at times, the Yates family seemed to imitate the Woronieckis—a bus-living, home-schooling, Bible-reading brood relishing the isolation of itinerancy.<sup>294</sup> According to Woroniecki, "the role of woman is derived . . . from the sin of Eve."<sup>295</sup> Likewise, he thought that "bad mothers" create

280. See App. 1 (July 27-28, 1999) at 64-65.

281. See *id.* (July 27-28, 1999 n.61) at 77.

282. Roche, *supra* note 1, at 47.

283. See App. 1 (July 28, 1999) at 65; Roche, *supra* note 1, at 47.

284. Roche, *supra* note 1, at 47.

285. Telephone interview with Shari Lusskin, M.D., *supra* note 279.

286. See App. 1 (Aug. 9, 1999) at 66.

287. See *id.* (Dec. 14, 1999) at 67.

288. See *id.*

289. See *id.*

290. See *id.* (Early-mid 1996-Oct. 1998) at 61-62.

291. See Roche, *supra* note 1, at 48.

292. *Id.*

293. See App. 1 (Oct. 1998) at 62.

294. See *id.* (Early-mid 1996 n.11) at 75.

295. See Roche, *supra* note 1, at 48.

“bad children.”<sup>296</sup> There came a time when Woroniecki’s “hell burning” influence on Andrea was so great, it distressed both her parents and even Rusty.<sup>297</sup>

By the spring of 2000, Andrea became pregnant again, a decision seemingly made with Rusty when Andrea started to improve so markedly.<sup>298</sup> Yet, the news greatly alarmed Starbranch, who had warned that Andrea’s problems could be far more serious if they returned,<sup>299</sup> as well as Andrea’s mother, who had believed all along that Rusty’s demands prompted Andrea’s breakdown.<sup>300</sup> Debbie Holmes, a former nursing colleague of Andrea’s, echoed this view of Rusty, claiming that Andrea continually depicted Rusty as manipulative and controlling and that Rusty pushed her to have the fifth baby.<sup>301</sup>

### C. Andrea’s Plunge into Mental Illness

Starbranch’s predictions rang true. Andrea’s pregnancy was met by another downward dive into mental illness, this time precipitated by the death of Andrea’s father.<sup>302</sup> Andrea also became more absorbed with the teachings of the Bible.<sup>303</sup> The effects of the traumatic circumstances surrounding her father’s death were obvious: Andrea stopped talking; she would continually hold Mary but not feed her; she would not drink liquids; she scratched and picked at her scalp until she started to become bald again.<sup>304</sup>

On March 31, 2001, four months after Mary’s birth,<sup>305</sup> Rusty sought to rehospitalize Andrea, with Starbranch’s urging. This time, Rusty took Andrea to the Devereux Texas Treatment Center Network,<sup>306</sup> a trip that Andrea adamantly resisted.<sup>307</sup> Only with much prodding from Rusty and her brother did Andrea finally agree to go to the hospital. Once there, she refused to sign forms admitting herself. Because he thought Andrea’s condition was dangerous, her attending psychiatrist, Mohammed Saeed,<sup>308</sup> initiated the process of requesting that a state judge confine Andrea to Austin State Hospital.<sup>309</sup> Only after Rusty’s continual pleading did Andrea finally agree to sign the forms admitting herself to Devereux.<sup>310</sup>

Saeed’s account of Andrea’s condition appeared to be based entirely on Rusty’s description rather than from Andrea’s treating psychiatrists or from Andrea herself who, Saeed said, rarely spoke.<sup>311</sup> When Rusty insisted that Saeed

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296. *Id.*

297. *Id.*

298. *See App. 1 (Mar. 2000) at 67.*

299. *See id.*

300. *See id. (Mar. 2000 n.93) at 78; see also Roche, supra note 1, at 48.*

301. *See App. 1 (Mar. 2000 n.93) at 78; see also Roche, supra note 1, at 48.*

302. *See App. 1 (Mar. 12, 2001) at 67.*

303. *See id. (Mar. 12, 2001 n.95) at 79; see also Roche, supra note 1, at 48.*

304. *See App. 1 (Mar. 13-30, 2001) at 67.*

305. *See id. (Mary was born on November 30, 2000) at 67.*

306. *See id. (Mar. 31, 2001) at 67-68.*

307. *See id.*

308. *See id.*

309. *See id.*

310. *See id.*

311. *See id. (Apr. 2, 2001, Apr. 5, 2001, Apr. 9, 2001 n.109) at 68, 79.*

put Andrea on Haldol,<sup>312</sup> a drug that had been helpful to her in the past, Saeed complied.<sup>313</sup> Saeed discontinued the treatment shortly thereafter because, he said, her “flat face” seemed to be a side effect.<sup>314</sup> Later, Saeed would testify that, based on the little Andrea said, she did not seem psychotic, never described the torment she was going through, and denied experiencing hallucinations and delusions.<sup>315</sup>

After ten days at Devereux, Andrea finally started feeding herself again—a behavioral improvement which, in Saeed’s opinion, justified discharging her even though her medication regime was still not stable.<sup>316</sup> Also, Andrea wanted to go home and Saeed thought that Rusty could take care of her.<sup>317</sup>

When Andrea returned home, Rusty’s mother, Dora, visited from Tennessee to help out during the day while she stayed at a motel in the evenings.<sup>318</sup> Yet, there were clear signals of Andrea’s desperate mental state. On May 3, for example, after Andrea and Dora returned from taking the children for a walk, Noah told Dora that he saw Andrea filling up the bathtub with water.<sup>319</sup> When Dora turned the water off and asked Andrea why she was running the water, Andrea replied only, “[j]ust in case I need it.”<sup>320</sup> Presumably, Andrea’s behavior must have been quite unusual for such an (otherwise) innocuous event to have garnered so much notice from Noah and Dora.<sup>321</sup> Andrea also would not allow her friend Debbie Holmes inside the house when Debbie stopped by to leave food that afternoon. Later, Holmes stated that she thought Andrea had been repossessed by the Devil, an issue that both she and Andrea had discussed after Andrea’s illness in 1999.<sup>322</sup> This time, however, Debbie thought the “the demons had returned a hundredfold.”<sup>323</sup>

Based upon what was happening, Andrea returned to Devereux for rehospitalization. Again, Saeed was her chief caretaker.<sup>324</sup> During her entire stay at Devereux, Andrea was almost completely silent and lethargic, particularly around Rusty. Apparently, in group sessions, Rusty dominated discussions and always answered questions asked of Andrea, who would not even nod her head.<sup>325</sup> While on a combination of Haldol and antidepressants, Andrea stayed in her room most of the time on fifteen-minute suicide checks.<sup>326</sup> By May 14, Saeed

312. Haldol is used “in the management of manifestations of psychotic disorders.” PHYSICIAN’S DESK REFERENCE 2534 (56th ed. 2002).

313. See App. 1 (Apr. 9, 2001 n.109) at 79.

314. See *id.*

315. See *id.* (Apr. 13, 2001 n.113) at 79-80.

316. See *id.* (Apr. 12, 2001) at 68.

317. See *id.* (Apr. 18, 2001) at 68.

318. Roche, *supra* note 1, at 49.

319. See App. 1 (May 3, 2001) at 68.

320. See *id.*

321. Telephone interview with Shari Lusskin, M.D., *supra* note 279.

322. See App. 1 (May 3, 2001 n.117) at 80; see also Roche, *supra* note 1, at 49.

323. See Roche, *supra* note 1, at 49.

324. See App. 1 (May 4, 2001) at 68.

325. See *id.* (May 5, 2001, May 10, 2001, May 14, 2001 n.126) at 69, 80; see also Roche, *supra* note 1, at 49.

326. See Roche, *supra* note 1, at 49.

suggested that she could go home. Although Andrea was still depressed and basically mute (apart from responding with her name when asked), her sleeping and eating had greatly improved and she was no longer expressing suicidal thoughts.<sup>327</sup>

On June 18, a month after Andrea's release from Devereux and after six days of outpatient therapy, Rusty and Andrea met with Saeed.<sup>328</sup> Andrea's mental state was sharply declining.<sup>329</sup> At that point, Andrea was off Haldol and Saeed was experimenting with other drug combinations.<sup>330</sup> As usual, Rusty answered most of the questions addressed to Andrea, but he expressed deep concern. Andrea was getting worse and was now having nightmares.<sup>331</sup> Rusty asked that Saeed reconsider applying shock therapy, a strategy Saeed declined, saying it was for far more serious disorders.<sup>332</sup> Also, Saeed did not want to re-prescribe Haldol.<sup>333</sup> Instead, he readjusted Andrea's level of antidepressants, suggested that she see a psychologist, rather than a psychiatrist, and, perhaps most strikingly, "think positive thoughts."<sup>334</sup>

The next afternoon, Andrea watched cartoons on television and then joined Rusty and Noah for a quick round of basketball in the garage.<sup>335</sup> Yet, moments later, she returned inside and went to bed without changing her clothes.<sup>336</sup> She slept until the next morning, June 20, but had a nightmare during the night.<sup>337</sup> She would not tell Rusty what the nightmare was about.<sup>338</sup> That morning, while Andrea set out cereal bowls and milk for breakfast, Rusty made sure that she had swallowed her dose of antidepressants before he left for work.<sup>339</sup> According to Rusty, his last picture prior to the killings was one of seeing Andrea eating cereal from a box.<sup>340</sup>

#### D. Andrea's Killings and The Aftermath

##### 1. Andrea Drowns Her Children

From all accounts, Andrea started the drownings nearly as soon as Rusty left because her children were still having breakfast.<sup>341</sup> First, she selected "Perfect Paul," then three-years-old, apparently her greatest joy (and the "least trouble")

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327. See App. 1 (May 14, 2001) at 69.

328. See *id.* (June 18, 2001) at 69-70.

329. See *id.*

330. See *id.*

331. See *id.*

332. See *id.*

333. See *id.*

334. See *id.*

335. Roche, *supra* note 1, at 50.

336. *Id.*

337. See App. 1 (June 19, 2001) at 70; see also Roche, *supra* note 1, at 50.

338. See Roche, *supra* note 1, at 50.

339. See App. 1 (June 20, 2001) at 70.

340. Roche, *supra* note 1, at 50.

341. See *infra* Appendix 3 at 89: Transcript of Andrea Yates's Confession (June 20, 2001) [hereinafter App. 3]; see also Paul Burka, *It's Crazy*, TEX. MONTHLY, July 2002, at 8 (examining Andrea's confession in light of the problems with, and possible alternatives to, the Texas insanity standard).

of the five.<sup>342</sup> Paul's death took only seconds. She tucked his body in her bed and laid his head on the pillow. Next came Luke (age two), John (age five), and then Mary (age six months), who was nursing a bottle while Andrea was drowning the others. Andrea left Mary in the tub.<sup>343</sup>

Seven-year-old Noah was still eating his cereal when Andrea asked him to the bathroom.<sup>344</sup> When he "saw his sister facedown in the water, he asked, 'What happened to Mary?'"<sup>345</sup> Noah then tried to run away. But, Andrea ran after him, dragging him back to the tub—struggling to drown him while he came up twice for air. Afterwards, Andrea put Mary in the bed with her brothers, ensuring that their arms were wrapped around their little sister.<sup>346</sup> She left Noah in the tub.<sup>347</sup>

## 2. Andrea's Confession

Andrea immediately dialed 911.<sup>348</sup> While speaking "unemotionally"<sup>349</sup> and hesitating in response to questions, Andrea finally requested police and an ambulance.<sup>350</sup> When the dispatcher asked Andrea if she was ill, she said that she was. When he asked her if she was "sure" she was alone, Andrea responded that her sister was with her when, in fact, she was alone.<sup>351</sup> After Andrea called 911, she called Rusty. "It's time. I finally did it," was her first statement to him.<sup>352</sup> Then she told him to come home and hung up. Rusty called back, alarmed by her tone of voice, and asked Andrea if anyone was hurt. "It's the kids," Andrea said. He inquired which one. She said, "All of them."<sup>353</sup>

342. Roche, *supra* note 1, at 50.

343. See App. 3 at 92; see also Roche, *supra* note 1, at 50.

344. See App. 3 at 92; see also Roche, *supra* note 1, at 50.

345. See App. 3 at 93; see also Roche, *supra* note 1, at 50.

346. See App. 3 at 93; see also Roche, *supra* note 1, at 50.

347. See App. 3 at 93; see also Carol Christian, *Deciding Fate Takes Heavy Toll*, HOUS. CHRON., Mar. 10, 2002, at A1 (reporting the testimony of a pediatric pathologist who stated that four of Andrea Yates's children were still alive but unconscious when she took them from the bathtub and put them in her bed).

348. Associated Press, *Mother Faces Jury for Drowning Five Kids*, Jan. 18, 2002, available at [http://www.courttv.com/trials/yates/021802\\_ap.html](http://www.courttv.com/trials/yates/021802_ap.html).

349. *911 Tape Reveals Unemotional Andrea Yates*, CNN.COM, Jan. 6, 2002, available at <http://www.cnn.com/2001/US/12/10/yates.911>.

350. See *infra* Appendix 2 at 85: Transcript of Andrea Yates's 911 Call (June 20, 2001) [hereinafter App. 2].

351. See *id.*

352. Roche, *supra* note 1, at 44; *911 Tape Reveals Unemotional Andrea Yates*, *supra* note 349.

353. Roche, *supra* note 1, at 44; *911 Tape Reveals Unemotional Andrea Yates*, *supra* note 349. Dateline NBC's interview with Rusty Yates taped the following account:

Mr. R. YATES: She said, you know, like, "You need to come home." I said, "Is anyone hurt?" And she said, "Yes." And I said—I said, "Who?" And she said, "The children." And I sa—and she said, "all of them," and I—and I just—I mean, and my heart just sunk, you know?

Bob McKeown & Dawn Fratangelo, *The Stranger Within: Suzy Spencer Discusses Andrea Yates' Life and Postpartum Depression*, *Dateline NBC*, Mar. 17, 2002 (NBC television broadcast, Mar. 17, 2002).

The police officers who arrived described Andrea as “composed.” She showed them where they could get clean glasses for a drink of water in the kitchen, for example, and keys to unlock the back door.<sup>354</sup>

But it was Andrea’s seventeen-minute<sup>355</sup> confession to Houston Police Sergeant Eric Mehl that was to have one of the biggest impacts on the jury. During the jury’s brief forty minutes<sup>356</sup> of deliberation, they had requested the audiotape of Andrea’s account of what had transpired when she killed her children.<sup>357</sup> To the jurors, it appeared as though Andrea’s “plan” to kill her children was cold and methodical.<sup>358</sup> Nearly all of Andrea’s answers to questions were monosyllabic and the way that Mehl questioned her fostered the impression of matter-of-fact indifference to the killing. “No,” she did not hate her children. “No,” she was not mad at them. She had, however, considered the prospect of killing them for two years.<sup>359</sup> She realized that she was not being a good mother to them and “they weren’t developing correctly,” either in their learning or their behavior.<sup>360</sup> She also “realized that it was time to be punished” and, in response to Mehl’s question, she wanted the criminal justice system to punish her.<sup>361</sup> She added that she had thought of drowning the children two months earlier<sup>362</sup>—and filled the tub with water—but she “[j]ust didn’t do it at that time” and also believed that Rusty would have stopped her.<sup>363</sup>

To those who did not “know” Andrea Yates, her attitude would, no doubt, appear indifferent and her behavior calculated. But, as two postpartum specialists have noted with respect to the Yates case, organic psychosis involves a “waxing and waning” of sensation and mood.<sup>364</sup> Simply because Andrea called her husband and the police after the killings does not necessarily mean she was experiencing a “normal mental status” and could tell the difference between right and wrong at the time of the killings.<sup>365</sup> That kind of analysis suggests that “we extrapolate backward then ‘predict’ that she had an intact thought process.”<sup>366</sup> Another expert honed the key issue: Crimes based on “deluded moral reasoning” can be “well planned, carefully executed, and . . . have evidenced high degrees of behavioral control.”<sup>367</sup> As Part V discusses, Dietz’s perspective on Andrea’s mental state was entirely different.

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354. Jim Yardley, *Texas Jury Convicts Mother Who Drowned Her Children*, N.Y. TIMES, Mar. 12, 2002, at A23.

355. Roche, *supra* note 1, at 50.

356. See App. 1 (Mar. 16, 2002) at 74-75.

357. Roche, *supra* note 1, at 44; *911 Tape Reveals Unemotional Andrea Yates*, *supra* note 349.

358. See Connell, *supra* note 129, at 18.

359. See App. 3 at 94.

360. See *id.* at 90.

361. See *id.* at 95.

362. See *id.*

363. See *id.*

364. Meyer & Spinelli, *supra* note 77, at 176.

365. *Id.* (“A call for help is not indicative of a normal mental status during an event.”).

366. *Id.*

367. Connell, *supra* note 129, at 19.

## V. PARK DIETZ'S INTERVIEW AND TESTIMONY IN THE ANDREA YATES CASE

Park Dietz's interview with Andrea Yates and his trial testimony provide additional evidence for assessing how Dietz appeared to influence jurors. Part V explores one particularly striking feature of Dietz's testimony: Even though both sides agreed that Andrea severely suffered from postpartum depression and psychosis and that it significantly affected her conduct, neither side seriously questioned Dietz's statements or his knowledge.

## A. Dietz's Interview with Andrea

Dietz interviewed Andrea for two days in November 2001,<sup>368</sup> nearly five months after the killings and four months after Phillip Resnick, the defense's primary psychiatric expert, interviewed Andrea.<sup>369</sup> Over the months after the killings, Andrea showed substantial progress due to a regimen of antipsychotic medication. Other professionals estimated that by August, Andrea's psychosis seemed under control<sup>370</sup> and by September, a jury found her competent to stand trial.<sup>371</sup>

According to Dietz, Andrea was grossly psychotic the day after the killings<sup>372</sup> and was suffering from schizophrenia when he met her in November 2001.<sup>373</sup> He still believed, however, that she knew the difference between right and wrong at the time she killed her children.<sup>374</sup> This conclusion, of course, stemmed in part from the November interview he conducted with her and the questions he asked about how and why she planned to kill her children.

In response to Dietz's questions, Andrea explained that she did not want her children "tormented by Satan" as she was.<sup>375</sup> She noted that Satan had been conveying "bad thoughts" through the television and the cameras in her home.<sup>376</sup> She was also "afraid Satan would lure [her] children to himself—and maybe that [she] had some Satan in [her]."<sup>377</sup> She believed Satan was "inside [her] giving [her] directions . . . about harming the children . . . about a way out—to drown them."<sup>378</sup> According to Andrea, the drowning would be "a way out" because the children "would go up to heaven and be with God, be safe."<sup>379</sup> Basically, "at the time" Andrea thought "this was a good idea" because she "didn't want [her children] ruined—[she] was afraid they would continue to go downhill—and [she] thought [she] should save them before that happened."<sup>380</sup>

368. Dietz-Yates interview, *supra* note 154; see App. 4 at 100, tr. at 27.

369. Transcript of Phillip Resnick's interview with Andrea Yates (July 14, 2001) [hereinafter Resnick-Yates interview] (on file with author).

370. Meyer & Spinelli, *supra* note 77, at 174.

371. See App. 1 (Sept. 22, 2001) at 72.

372. See App. 4 at 114, tr. at 109.

373. See *id.* at 101, tr. at 51.

374. See *id.* at 137, tr. at 201.

375. Dietz-Yates interview, *supra* note 154.

376. *Id.*

377. *Id.*

378. *Id.*

379. *Id.*

380. *Id.*

Andrea believed “the children were in torment” from Satan because they were exhibiting relatively “more strife and disobedience”; however, she did not think that Dora, her mother-in-law, was in such torment nor Rusty, who she believed was a “good man.”<sup>381</sup> In Andrea’s mind, Satan had selected her children because of Andrea’s own personal “weaknesses”; in fact, she had stopped reading the Bible close to the time of the killings because she “felt like Satan was nearby.”<sup>382</sup>

Andrea seemed to have been markedly influenced by the 1995 movie “Seven,”<sup>383</sup> a crime thriller about two homicide detectives who strive to solve a series of mysterious murders patterned on the seven deadly sins: gluttony, greed, sloth, pride, lust, envy, and wrath.<sup>384</sup> Andrea told Dietz that because “[she] felt [she] had done all the other sins” but murder, she believed that the drowning would constitute her seventh, and last, sin.<sup>385</sup> She claimed that she was thinking of the movie on the day she killed her children—“about what [she] was about to do, and how it fit in there—the deadly sins—and how [she had] done all of them after [she] drowned the children.”<sup>386</sup> She “saw [the drowning] as a sin that [she was] going to commit.” Although the act of drowning would “condemn” her, it would save the children.<sup>387</sup>

While Andrea had ruminated about the seven deadly sins a week before she killed her children, she picked the specific date she was going to drown them only the night before.<sup>388</sup> She did not tell Rusty her thoughts about the deadly sins or of her plans to kill because, in response to Dietz’s question, she believed Rusty would interfere.<sup>389</sup> As Andrea explained, if she had been stopped, “the children would still be alive” and she “would still worry about their soul with Satan around.”<sup>390</sup> On the morning of the killings, she tried to act as normally as possible so Rusty would not be alarmed.<sup>391</sup>

Despite Andrea’s claims of careful planning, however, on the day of the killings, she did not close the blinds or the curtains or take the phone off the hook (the door had already been locked the night before and Rusty left through the garage exit).<sup>392</sup> She also remembers taking her medication.<sup>393</sup> In answer to Dietz’s questions, she said she felt “the presence of Satan that morning . . . just helping [her] fill up the tub, and getting ready.”<sup>394</sup> Yet, she believed she would be punished (“jail”) and she knew the act was illegal.<sup>395</sup> It seemed as though An-

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381. *Id.*

382. *Id.*

383. For a review of the story of the film, “Seven,” see Janet Maslin, *A Sickening Catalogue of Sins, Every One of Them Deadly*, N.Y. TIMES, Sept. 22, 1995, at C18.

384. Dietz-Yates interview, *supra* note 154.

385. *Id.*

386. *Id.*

387. *Id.*

388. *Id.*

389. *Id.*

390. *Id.*

391. *Id.*

392. *Id.*

393. *Id.*

394. *Id.*

395. *Id.*

drea viewed the killing as a balancing test: “Doing it, [the children would] go to heaven; not doing it, there’s the risk of Satan messing them up . . . . Probably if I did it, I’d get in trouble.”<sup>396</sup>

Notably, in his court testimony, Dietz conceded that he did not interview either Rusty or Dora, both of whom refused to see him.<sup>397</sup> Dietz also stated that Andrea had difficulty being viewed by others as mentally ill and that her attitude hindered her recovery. For example, after her first suicide attempt, Andrea refused to take the antipsychotic medication prescribed to her and flushed it down the toilet.<sup>398</sup> As Dietz emphasized, “the most consistent story she’s indicated is that she didn’t think she was psychotic, didn’t want to be thought of that way and resented someone calling her that.”<sup>399</sup> However, a key issue that was not brought out in Dietz’s testimony, either in direct or cross, is that Andrea, like many psychotic people, was wrong about her mental status.<sup>400</sup>

## B. Dietz’s Empirically Unsupported Conclusions

Dietz’s testimony about Andrea’s condition is full of troubling speculations that sound authoritative but have no empirical support. Of course, the field of psychiatry in general is vulnerable to such criticisms.<sup>401</sup> As the following analysis suggests, however, in a number of instances, Dietz’s accounts give Andrea’s actions a degree of intentionality and manipulation that seem to derive only from Dietz’s interpretations and no other source.

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396. *Id.*

397. *See* App. 4 at 100, tr. at 27.

398. *See id.* at 102, tr. at 57.

399. *See id.*

400. *See* Sonia Johnson & Martin Orrell, *Insight and Psychosis: A Social Perspective*, 25 PSYCHOL. MED. 515, 515-20 (1995).

401. *See* Binder, *supra* note 40, at 1819-25 (noting in the context of expert witness testimony that “[t]he field of medicine is not an exact science” and that “opinion is the result of reasoning, and no one can be prosecuted for defective mental processes”) (citation omitted); Coles & Veiel, *supra* note 42, at 609-10 (contending that many health experts testifying in the areas of psychology and psychiatry fail to meet the required standards for science and expert testimony by: “1. presenting idiosyncratic theories; 2. making inappropriate conceptualisations; 3. quantifying data inappropriately; and/or 4. selectively collecting, presenting, or interpreting data; and thereby 5. lacking the prime requirement of an open, sceptical, mind”). For criticisms of psychoanalysis in particular, see Deborah W. Denno, *Crime and Consciousness: Science and Involuntary Acts*, 87 MINN. L. REV. 269, 306-07 (2002) (noting that, “over the last four decades, the status of psychoanalysis as a science has been seriously undermined”); Eric R. Kandel, *A New Intellectual Framework for Psychiatry*, 155 AM. J. PSYCHIATRY 457, 458 (1998) (discussing the specific “limitations of psychoanalysis as a system of rigorous, self-critical thought”). One psychiatric expert’s characterization aptly addresses the sweeping nature of the profession’s flaws:

Although many of the psychopharmacological and technical developments in psychiatry have been impressive, the conceptual foundation for the field continues to be primitive. As a result, inconsistencies, contradictions, and confusion reign whenever certain fundamental issues arise. Psychiatry still has yet to come up with sound definitions of “mental illness,” “insanity,” “normality,” or “sanity.” And it still has yet to come up with a sensible notion of personal responsibility, which lies at the heart of most legal issues.

Ludwig, *supra* note 42, at 116.

### 1. Andrea's Suicide Attempts

Dietz testified that when Andrea attempted suicide the first time using pills, she got a “week away from the stressors, *only* with an overdose,” when she was hospitalized (her admission to Methodist Hospital’s psychiatric unit).<sup>402</sup> In other words, the idea conveyed was that with “only” an overdose, Andrea could get a substantial break from taking care of the kids and the house. After her week-long stay at Methodist, however, Andrea came back to the same stressful environment in the cramped bus.<sup>403</sup> For that reason, according to Dietz, the second time Andrea attempted to commit suicide, she “upped the ante” by using a knife.<sup>404</sup> Presumably, by employing a more certain and serious instrument of death, Andrea could acquire even more help and a bigger break than she got the first time by “only” ingesting pills. Dietz indicated that Andrea was successful with this approach.<sup>405</sup> While she was hospitalized the second time, her parents insisted to Rusty that Andrea could no longer stay in the bus because it was not healthy for her or the children.<sup>406</sup> As a result, Rusty purchased a nice new house, which was all ready for Andrea to live in when she returned from the hospital.<sup>407</sup> In Dietz’s eyes, a new home was the reward that Andrea was seeking: “[T]his time, [the suicide attempt] not only got her *hospitalized*, it got her a *house*.”<sup>408</sup>

The implication, of course, is that Andrea somehow realized that she would get both a long break and material benefit—“a house”—for her more dramatic second suicide attempt. But, that view contradicts everything we know of Andrea: that she hated to be hospitalized, that she continually resisted psychiatric help, that she resented any kind of psychiatric label. Indeed, Andrea was so opposed to being re-hospitalized at Devereux Texas Treatment Center on March 31, 2001, that Saeed had to start the process of involuntarily committing her to a state hospital.<sup>409</sup> For Dietz to suggest, even indirectly, that Andrea’s suicide attempts were strategic efforts to gain a better home derides the reality of Andrea’s psychosis and the severity of her postpartum disorders. As the defense noted, Andrea “never told any doctor that, ‘I wanted a new house.’”<sup>410</sup> Andrea’s marital history suggests just the reverse—that Andrea was enamored (perhaps even more than Rusty) with the Woronieckis’ bus-living existence and later apologized to Rusty for not being able to handle it.<sup>411</sup>

It is also questionable even by Dietz’s own account whether Andrea was in fact “upping the ante”<sup>412</sup> by using a knife rather than pills. Only moments before making that statement, Dietz claimed that it was unclear what level of severity Andrea’s knife-using episode entailed (“varying degrees of intent”); in contrast, her ingestion of pills would most likely have resulted in her death if her mother

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402. See App. 4 at 102 (emphasis added), tr. at 58.

403. See *id.* at 102-03, tr. at 58-59.

404. See *id.* at 102, tr. at 58.

405. See *id.* at 102-03, tr. at 58-59.

406. See App. 1 (Aug. 9, 1999) at 66.

407. See *id.*

408. See App. 4 at 102-03 (emphasis added), tr. at 59.

409. See App. 1 (Mar. 31, 2001) at 67-68.

410. See App. 4 at 135, tr. at 193.

411. See App. 1 (Dec. 14, 1999) at 67; see also Roche, *supra* note 1, at 47.

412. See App. 4 at 102, tr. at 58; see also Roche, *supra* note 1, at 48.

had not awakened her.<sup>413</sup> Most importantly, as Dietz conceded on cross-examination, Andrea's overdose and knife threat could be "interpreted by medical experts as an alternative to hurting her children."<sup>414</sup> Psychological research suggests that "aggression against others and aggression against self frequently co-occur" and that "[r]isk assessment for suicide and homicide should go hand in hand."<sup>415</sup> Andrea's psychiatric history and her final act of killing her children support, rather than contradict, this suicide-homicide relationship.

## 2. Andrea's Pregnancies

Dietz also portrayed Andrea as manipulative and controlling in her decision to discontinue medication and become pregnant again with Mary, her fifth child.<sup>416</sup> Initially, Dietz emphasized that Andrea did not want to admit her mental illness and therefore did not take her medication for that reason;<sup>417</sup> yet, he depicted her motives very differently when he discussed the medication issue in the context of Andrea and Rusty's apparent efforts to have another child. According to Dietz, Andrea's pregnancy was "one of the repeated examples of Mrs. Yates not following the advice of her doctor and thinking she knows best and *maintaining control*."<sup>418</sup> Dietz suggests that Andrea directed the entire decision to conceive: "She's the one deciding what to do. She will not take the medicine unless she wants it. She will get pregnant when she wants to. She's not taking the medicine during pregnancy."<sup>419</sup>

Dietz's analysis assumes realities of Andrea's life that did not exist. First, all accounts of Andrea and Rusty's marriage indicate that Rusty was the one in control, the one making decisions, and the one pushing for more children.<sup>420</sup> Second, testimony revealed that *both* Andrea and Rusty had been advised by multiple staff members "on the importance of staying on medications and on the importance of not having another pregnancy."<sup>421</sup> Dietz's conclusions suggest that Rusty had nothing to do with the decision. Indeed, Rusty continually joked (even at his children's funeral) that he always wanted enough boys "to make up a basketball team."<sup>422</sup> Likewise, Debbie Holmes testified that Andrea complained to her about the continual pregnancies.<sup>423</sup> Third, noncompliance with taking medication is the norm among psychiatric patients for a variety of reasons, but

413. See App. 4 at 102, tr. at 58.

414. See *id.* at 135, tr. at 193.

415. Marc Hillbrand, *Homicide-Suicide and Other Forms of Co-Occurring Aggression Against Self and Against Others*, 32 PROF. PSYCHOL.: RES. & PRAC. 626, 632 (2001); see also Anna Lembke, *A Psychosocial Approach to Postpartum Depression*, 19 PSYCHIATRIC TIMES, June 2002, available at <http://www.mhsource.com/pt/p020611.html> (noting that in some cases of postpartum depression, a mother's belief that her child would be better off without her can result in maternal suicide while "[t]he not uncommon corollary to that is a mother's belief that her children are somehow defective or developing improperly, which can—in cases—lead to infanticide").

416. See App. 4 at 104, tr. at 65.

417. See *id.* at 98, tr. at 4.

418. See *id.* at 104 (emphasis added), tr. at 65.

419. See *id.*

420. See *supra* notes 300-01 and accompanying text; see also Roche, *supra* note 1, at 48.

421. See App. 4 at 103-04, tr. at 64.

422. See App. 1 (Mar. 2000 n.93) at 78-79.

423. See *supra* note 301 and accompanying text; see also App. 1 (Feb. 28, 2002) at 73.

often because the mentally ill are paranoid or delusional about what doctors give them.<sup>424</sup> By his comments, Dietz implied that Andrea's behavior was anomalous and that her refusal of medication related to her need to "control." Yet, recent research suggests that "more serious mental illness is a *cause* not a *consequence*, of [a patient's] refusal of treatment" with antipsychotic medication.<sup>425</sup> In fact, when Andrea was being evaluated for her competency hearing, she expressed concern that her medication may be contributing to her psychotic episodes. Resisting medication was also a matter of pride.<sup>426</sup> Fourth, many women reject medication while they are pregnant; the DSM entry on postpartum disorders discusses this very issue and makes recommendations to medical personnel about how to counteract it.<sup>427</sup> Finally, Dietz never acknowledged that more than fifty percent of all pregnancies are unplanned, irrespective of what couples want or the decisions they make.<sup>428</sup> Throughout his testimony about Andrea's last pregnancy, Dietz attributes a level of intentionality to events that may well have simply been an accident.

### 3. Andrea's Knowledge of Right and Wrong

In an interview with *Time Magazine* on the day that Andrea was sentenced, Dietz stated that despite Andrea's mental illness, her "thought process" still

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424. Paul S. Appelbaum & Thomas G. Gutheil, *Drug Refusal: A Study of Psychiatric Inpatients*, 137 AM. J. PSYCHIATRY 340, 340 (1980) (noting that during a three-month study of patients at a community mental health center, "refusal of medication was common" even though it did not severely affect the care of most patients; when patient care was seriously impaired, however, the reasons for patient refusal appeared to be "delusionally motivated"); see also Lorna R. Amarasingham, *Social and Cultural Perspectives of Medication Refusal*, 137 AM. J. PSYCHIATRY 353, 358 (1980) (explaining that "[a] substantial number of patients do not comply with prescribed regimens" and that the reasons for patient refusal must take into account "the social and cultural meaning of medication" to the patient); Kathleen M. Carroll et al., *Targeting Behavioral Therapies to Enhance Naltrexone Treatment of Opioid Dependence: Efficacy of Contingency Management and Significant Other Involvement*, 58 ARCH. GEN. PSYCHIATRY 755, 761 (2001) (referring to the "significant problems with [drug therapy] compliance" among psychiatric patients, particularly those who are most "compromised by compliance issues, including the more highly impaired subgroups (. . . patients with dual diagnoses and those with personality disorders"). One study concluded that patients who refused medication comprised three "relatively distinct" categories:

- 1) situational refusers—a diverse group of patients who on occasion refused medication for a short period of time and for one of a variety of reasons; 2) stereotypic refusers—chronically ill patients with paranoid traits who habitually and predictably responded to a variety of stresses with brief medication refusal; and 3) symptomatic refusers—young relatively acutely ill patients whose refusal, often based on delusional premises, was sustained over a long period and successfully stymied treatment efforts.

Appelbaum & Gutheil, *supra*, at 342.

425. John A. Kasper et al., *Prospective Study of Patients' Refusal of Antipsychotic Medication Under a Physician Discretion Review Procedure*, 154 AM. J. PSYCHIATRY 483, 488 (1997) (emphasis added).

426. See App. 1 (Aug. 10, 1999, Jan. 2000) at 66-67; see also Jacqueline A. Sparks, *Taking A Stand: An Adolescent Girl's Resistance to Medication*, 28 J. MARITAL & FAM. THERAPY 27, 31 (2002) (noting that for those patients "choosing to resist, the price may be worth it when it means the preservation of choice, dignity, and a sense of personal agency").

427. DSM-IV-TR, *supra* note 124, at 422-23.

428. *Ortho Gives Packaging a New Twist*, 23 CHAIN DRUG REV. 8 (June 4, 2001) (noting that, "[a]ccording to the Association of Reproductive Health Professionals, more than 50% of all pregnancies in the United States are unplanned each year") (citation omitted).

permitted her to know right from wrong.<sup>429</sup> “Her mind recognized murder as wrong or she would not have sought the death penalty to get rid of her inner demons and protect her children from falling into [Satan’s] grasp.”<sup>430</sup> Also, “by wanting to dispose of Satan, she had to believe Satan had evil ideas. Therefore, she still comprehended evil to be wrong. She also ‘knew that society and God would condemn her actions.’”<sup>431</sup> Of course, Dietz’s analysis of Andrea, both in this interview and in court, presumes that Satan actually exists.

Frequently during his testimony, Dietz would strain the interpretation of an incident to support the view that Andrea knew the difference between right and wrong. For example, on May 3, when Andrea filled the home bathtub with water while Dora Yates was present, the incident was perceived to be so bizarre, it sent Andrea back to Devereux.<sup>432</sup> According to Dietz, Andrea “doesn’t give a reasonable account of why she did that [fill the tub], and they [Devereux] take her back the next day or the day after.”<sup>433</sup> But, in the months following the incident, Andrea gave several accounts of why she filled the tub that day, including what seemed to be the most reasonable (and defense-oriented) one—she had thoughts of drowning her children.<sup>434</sup> A portion of the direct examination of Dietz seemed to recognize that this explanation could support the defense’s position.<sup>435</sup> If Andrea were contemplating drowning her children with Dora present, it would fuel the defense’s argument that she may not have known that what she was doing was wrong. While this interpretation of Andrea’s motives is purely speculative, it is the most rational account that Andrea herself provides. It is also congruent with the vague statement that Andrea made in response to Dora’s question of why she was running the water, that is, “Just in case I need it.”<sup>436</sup>

Indeed, at a later point in his testimony, Dietz downplayed the fact that Andrea told others that she was considering drowning her children while Dora was present. Dietz’s story is intertwined with Andrea’s own conflicting accounts. As Dietz explained, “[s]ometimes she told doctors that she was thinking of drowning the children then. Sometimes she said she thought she might drown the children then. Sometimes she said that she might need it [the tub water] because they might have their water cut off by the utility company; and at those times, she said that she wasn’t thinking of drowning the children then.”<sup>437</sup> However, the explanation that Andrea gave Dietz while he was interviewing her is the *least* reasonable one: “the utility company truck explanation rather than drowning the children.”<sup>438</sup>

429. See *Interview: Dr. Park Dietz, supra* note 148.

430. See *id.*

431. See *id.*

432. See App. 1 (May 3, 2001) at 68.

433. See App. 4 at 104-05, tr. at 67.

434. See App. 1 (Feb. 21, 2002 n.180) at 82.

435. See App. 4 at 107, tr. at 78.

436. See App. 1 (May 3, 2001) at 68.

437. See App. 4 at 106, tr. at 75. There are also some accounts suggesting that Rusty was present, but this is not entirely clear.

438. See *id.*

The more pointed question to ask is, why did Andrea tell Dietz the company truck answer when she told others she was thinking of drowning her children? Does it really make sense for a woman to fill her family tub in such an odd manner on May 3 because of a possible water shortage but then fill it again on June 20 to drown her children? It seems unlikely that Andrea's disruptive actions on May 3, which were sufficiently disturbing to hospitalize her again, appeared due to her concern over a water shortage, particularly in light of the other evidence.

In sum, Dietz's testimony was too focused on trying to explain Andrea's illogical thinking, which basically stemmed from her mental illness. His analysis was not based on "facts" but rather pure speculation about her delusional thought patterns. According to one legal scholar, "medical expert witnesses are not advocates for either side in the litigation, but may advocate their opinion."<sup>439</sup> Yet, there were a number of aspects of Dietz's testimony where his prosecutorial bent came through quite obviously. For example, despite his level of experience, Dietz repeatedly referred to the drownings as "homicides"<sup>440</sup> or "crimes,"<sup>441</sup> even though at the time, Andrea had not been convicted of anything. Likewise, at certain points, it was Dietz who directly led the prosecution to a criminal conclusion about Andrea. For example: "Q. Now, you noted that - or Dr. Saeed told Mr. Yates that someone must be with his wife, but she was left alone; was that correct? A. Yes. And, of course, the significance of that is that it gives her the opportunity to commit the crimes."<sup>442</sup>

### C. Dietz's Attempts to Give "Logic" to Andrea's Illogical Delusions

A major portion of Dietz's testimony was analyzing Andrea's "homicide" in three phases: (1) the pre-homicide phase, (2) the homicide phase, and (3) the post-homicide phase. The pre-homicide phase was key for Andrea's defense because it went to the issue of whether she knew the difference between right and wrong. Dietz conceded that Andrea told both Rusty and her friend Debbie Holmes about "her concerns for the presence of Satan, the influence of Satan."<sup>443</sup> Even in Dietz's opinion, Andrea was open about her fears and did not attempt to hide them.

What Dietz emphasizes, however, is that despite Andrea's openness about Satan, she concealed the thoughts of harming her children from other people. If, for example, she was concerned that by mentioning the harm to other people it would actually happen, Dietz responds that this fear would be even more reason for Andrea to talk about it.<sup>444</sup> Dietz's "legal-like" logic applied to the thinking of a mentally ill Andrea Yates goes as follows:

If it's true that she believed that killing the children would save them, then why would she not want it to happen. She would want to talk about it so it came true

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439. Ciccone, *Expert Testimony*, *supra* note 42, at 798.

440. *See, e.g.*, App. 4 at 108, tr. at 83.

441. *See, e.g., id.* at 108, 110-11, tr. at 82, 92, 95.

442. *See id.* at 108, tr. at 81-82.

443. *See id.* at 109, tr. at 87.

444. *See id.*, tr. at 88.

and the children would be saved. So, I concluded at that point that she's keeping it secret, she knows that other people are going to stop her, that it's wrong, that it's a bad idea; and she admits as such. She admits that she knows people will stop her.<sup>445</sup>

Yet, there is no factual support for anything Dietz says. Dietz also rather bizarrely analyzes Andrea's statements as real and "debates" her theories about Satan even though everyone agreed that Andrea was mentally ill and delusional. Delusions are by definition illogical. As a key text on delusional disorders emphasizes, "[i]n the delusional mode, thought form is relatively normal but the abnormal content predominates and is associated with profound, but focused *illogicality*."<sup>446</sup> Dietz's story is based on applying a logical analysis to Andrea's truly illogical ruminations. There is really no diagnostically acceptable point to it. Nor is it even clear that Andrea intended what Dietz said because she never articulated it, he did.

Perhaps anticipating this criticism, Dietz explained that he is entitled to apply such an inordinate amount of logic to the thinking of a mentally ill person because Andrea seemed to him to be "psychologically ready" to engage in the act of killing.<sup>447</sup> Yet again, Dietz does not provide any empirical support for this very vague explanation. Parenthetically, the field of psychiatry does not encourage members of its profession to engage in logic-applied analyses of the illogical ramblings of mentally ill people.

But, for Andrea, there was no escape from Dietz's testimony; he seemed to have cut off every avenue with some explanation based entirely on speculative presumptions. Dietz showed striking confidence in his conclusions, despite the conjecture. Comparably noteworthy was Dietz's complete disregard of the literature on postpartum depression, which indicates that women generally *do not* tell others that they are thinking about harming or killing their children; they are afraid and embarrassed and disturbed by such thoughts.<sup>448</sup> Dietz's sweeping generalizations about Andrea's mental state are consistent with his ignorance of the subject matter.

#### D. Dietz's Criticism of Andrea's Inability to Nurture Her Dead Children

Dietz also focused on the easiest emotional target of Andrea's illogicalities—how Andrea treated her children after she killed them. For example, Dietz queried why Andrea did not try to "comfort the children, telling them they are going to be with Jesus or be with God."<sup>449</sup> Again, however, such comments were guesswork on Dietz's part. In other words, is it typical for mentally ill people to give their children religious words of comfort before they kill them, particularly if they think Satan is their guide?<sup>450</sup>

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445. See *id.*

446. Alistair Munro, *The Classification of Delusional Disorders*, 18 *PSYCHIATRIC CLINICS OF N. AM.* 199, 203 (1995) (emphasis added).

447. See App. 4 at 110, tr. at 89.

448. See Roche, *supra* note 1, at 47.

449. See App. 4 at 114, tr. at 106.

450. See *supra* notes 175-79 and accompanying text.

While being cross-examined, Dietz acknowledged that Andrea had been nurturing toward her dead children. She had placed her children's heads on pillows, for example, with Mary's head "resting on her older brother's shoulder" and Mary's hand "cupped by her older brother's hands."<sup>451</sup> According to the police officers who arrived on the scene, the children's bodies appeared "posed," as though the "older brother were taking care of the younger sister."<sup>452</sup> Such arrangements are perhaps a more objective gauge of Andrea's thoughts than the speculative hindsight Dietz offered. At the very least, the way that Andrea situated her children suggested that she may have believed they were going to take care of one another; in contrast, Dietz had nothing to support his comments apart from sheer conjecture.

Similarly, Dietz noted that Andrea seemed to cover each of her children's heads and faces as she put them on the bed.<sup>453</sup> He suggested that she may have covered them so that the remaining children, who were still alive, would not discover the bodies.<sup>454</sup> Later in his testimony, however, Dietz stated that Andrea's covering of her children's faces was "an indication of her feeling guilt or shame."<sup>455</sup> Dietz's explanation for Andrea's behavior is perplexing; there is a social norm to cover the faces of the deceased for reasons of respect or reverence. It would have been just as reasonable for Dietz to have pitched Andrea's motives in an alternative way, in other words, to state that covering the children was Andrea's way of showing care and comfort to them, given that all of these explanations are speculative anyway. Nonetheless, Dietz did resist supporting one of the prosecution's more damning insinuations—that Andrea's decision to leave Noah in the bathtub after he died was cold hearted. Instead, Dietz noted that, at fifty pounds, Noah was too heavy for Yates to lift.<sup>456</sup> "Nurses know not to lift heavy weights."<sup>457</sup>

Lastly, Dietz explained that Andrea seemed "grossly psychotic" and mentally disturbed from June 21 to some period thereafter, so "very sick" that she was hearing "growls and voices" and seeing "teddy bears and ducks and marching soldiers" that she believed were satanic.<sup>458</sup> Yet, he claimed there was not "nearly as much evidence of that kind of extreme sickness or gross psychosis on June 20th as [there is] for the period beginning June 21st."<sup>459</sup> Dietz attributed his impression that Andrea was "different in a sicker way" to the rapid changes in Andrea's life after she was arrested.<sup>460</sup> However, there is an alternative explanation. Andrea did not receive nearly as much medical attention on June 20 as she did on June 21, when she became the object of intense evaluation. On June 20, she was with police for much of the day whereas on June 21, she was surrounded by psychiatrists who were able to assess her mental state. Given these

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451. See App. 4 at 131, tr. at 175.

452. See *id.*

453. See *id.* at 113-14, tr. at 105.

454. See *id.*

455. See *id.* at 116, tr. at 115.

456. See *id.* at 137-38, tr. at 202.

457. See *id.*

458. See *id.* at 114, tr. at 109.

459. See *id.* at 115, tr. at 110.

460. See *id.*

day-to-day differences in the amount of time Andrea spent with medically trained professionals, Dietz's conclusions are unwarranted.

This analysis of Dietz's testimony could extend even further, continually assessing every word in the way that Dietz evaluated Andrea's every move. However, this Article is not intended to be an indictment of Dietz *per se*. Rather, it is a commentary on how swayed and fragile insanity determinations can be in the heat of litigation and how inadequate the criminal justice system is to handle them. Dietz did not create this situation; he merely responds to the many who want him to be part of it. As the following discussion makes clear, other aspects of the Yates trial as well as the law and culture of Harris County also appeared to be critical contributors to Andrea's conviction.

## VI. OTHER VIEWPOINTS ON THE ANDREA YATES CASE

Up to this point, discussion of the Yates trial has focused on Park Dietz. Of course, there were other perspectives and experts involved in the case. Part VI examines briefly only a selected number of these additional people and issues to give a glimpse of a broader story about Andrea.

### A. The Overall Defense and Prosecution Perspective

In general, the defense contended that Andrea's mental illness led her to believe she made the right choice when she killed her children. Andrea's long history of illness and her many visits to doctors<sup>461</sup> created a situation in which a number of defense experts were called to testify about her condition at the time they treated her or her mental state at the time she killed her children.<sup>462</sup> Yet, because of the numbers of medical specialists involved in the case who had evaluated Andrea at different times and for different purposes, some offered seemingly conflicting narratives of Andrea's perception of right and wrong. This range of opinion for the defense contrasted with the prosecution's more consistent argument that Andrea's acts were sane and intentional because the prosecution primarily relied only on Dietz's narrative.

Ironically, then, the severity and extent of Andrea's mental illness may have undercut her defense. There was one story of sanity from the prosecution and several stories of insanity from the defense. For example, Dr. Melissa Ferguson, a psychiatrist at the Harris County Jail, testified that Andrea told her in a post-arrest interview that drowning her children was "the right thing to do"

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461. *See generally* App. 1.

462. The following is a list of some of the major defense experts and the dates they testified: Dr. Melissa Ferguson (psychiatrist at Harris County jail)—Feb. 22-23, 2002; Dr. George Ringholz (neuropsychologist from Baylor College of Medicine)—Feb. 26, 2002; Dr. Eileen Starbranch (psychiatrist who treated Andrea for five months)—Feb. 26-27, 2002; Dr. Steve Rosenblatt (psychiatrist who examined Andrea after the drownings)—Mar. 1, 2002; Dr. Phillip Resnick (psychiatrist from Case Western University)—Mar. 1, 2002; Dr. Ellen Allbritton (psychiatrist who admitted Andrea to Devereux)—Mar. 4, 2002; Dr. Debra Osterman (psychiatrist who saw Andrea after the drownings)—Mar. 6, 2002; Dr. Lucy Puryear (psychiatrist)—Mar. 7, 2002; Dr. Mohammad Saeed (psychiatrist who treated Andrea at Devereux)—Mar. 6, 2002. *See generally* App. 1.

since it saved them from a life of torment and eventual damnation in hell.<sup>463</sup> Defense expert Dr. Phillip Resnick testified that although Andrea knew her actions were illegal, “she did what she thought was right in the world she perceived through her psychotic eyes at the time.”<sup>464</sup> Describing Andrea’s motives as “altruistic,” Resnick explained that she believed that she was sending her children to heaven and, in setting herself up for execution, ridding the world of Satan.<sup>465</sup> Another expert witness for the defense, Dr. George Ringholz, explained that in the midst of her “acute psychotic episode,” Andrea “did not know the actions she took on that day were wrong.”<sup>466</sup> Dr. Steve Rosenblatt further elaborated: “She was out of contact with reality, did not know right from wrong, and in my opinion, clearly was within what’s considered the legal definition of insanity.”<sup>467</sup>

Jurors struggling to make sense of it all would be additionally taxed by the open disagreement between Resnick and another defense expert, Dr. Lucy Puryear. According to Puryear, Andrea was too sick to know that her actions were wrong. In contrast, Resnick stated that Andrea knew her acts were illegal, but believed they were right because they saved her children from eternal damnation.<sup>468</sup> Granted, these two positions are not entirely mutually exclusive; however, Puryear acknowledged during cross-examination that there were conflicts between her testimony and Resnick’s and stated merely that they had “differing opinions.”<sup>469</sup>

Prosecutor Joseph Owmbly claimed, on the other hand, that determining insanity did not come down to “a battle of the experts,” but rather was “a question of common sense[.]”<sup>470</sup> According to Owmbly, the experts simply “present the evidence from the medical side” while the jurors, though unable to diagnose mental illness, “can tell you whether they believe a person knew right from wrong at the time.”<sup>471</sup> Similar to Dietz’s testimony, the prosecution downplayed Andrea’s history of mental illness as well as the neurobiological underpinnings of her disorder.

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463. See *Yates’ Husband Set to Testify for Defense*, CNN.COM, Feb. 27, 2002, available at [http://www.courttv.com/trials/yates/022702\\_cnn.html](http://www.courttv.com/trials/yates/022702_cnn.html).

464. See *Yates Claimed She Killed Kids to Keep Them from Going to Hell*, *supra* note 26.

465. See *Trial of Texas Mother Begins Third Week*, *supra* note 20.

466. See Associated Press, *Psychiatrist Says She Warned Yates*, Feb. 27, 2002, available at [http://www.courttv.com/trials/Yates/022702-pm\\_ap.html](http://www.courttv.com/trials/Yates/022702-pm_ap.html).

467. See *Trial of Texas Mother Begins Third Week*, *supra* note 20.

468. See Associated Press, *Videotapes Show Two Sides of Yates*, Mar. 7, 2002, available at [http://www.courttv.com/trials/yates/030702-a\\_ap.html](http://www.courttv.com/trials/yates/030702-a_ap.html).

469. *Id.*

470. See Grinfeld, *supra* note 140.

471. *Id.* According to some commentators, prosecutor Owmbly’s image of experts framing a picture that jurors fill in using common sense seemed flawed. The “huge chasm between our common-sense understanding of insanity and the legal definition of insanity,” Seligman, *supra* note 136, seems to consider it inappropriate for jurors to judge Andrea’s actions using the same rationale that they use to make daily decisions in their own lives. Even if jurors did understand that Andrea’s version of right and wrong may be different from that of a non-mentally ill person, is it realistic to think that a lay person would have the capacity to grasp the nature of Andrea’s mental illness, and its impact on her ability to determine right from wrong? It seems more likely that, when confronted with the conflicting complexities of determining Andrea’s “knowledge” of the legal and moral concepts of right and wrong, jurors’ confusion will make reliance on expert testimony all the more likely.

Yet, most of the expert testimony offered in the Yates case did little to abate the confusion surrounding Andrea's mental state. Not surprisingly, the testimony of expert witnesses for the prosecution directly clashed with the testimony of expert witnesses for the defense. As one psychiatric journalist explained, although prosecution expert Park Dietz and defense expert Phillip Resnick are well known in their mutual fields, they nonetheless viewed Andrea's insanity defense "in polar opposite ways."<sup>472</sup>

Overall, it appeared to be a tactical problem for the defense to deal with so many psychiatric experts. Their contrasting analyses blunted the defense's theory. Which story should the jurors choose? Assuming that Resnick was probably one of the stronger psychiatrists in terms of his demeanor and experience and was therefore more equal to Dietz,<sup>473</sup> the defense may have been better off presenting just Resnick (in addition to the psychiatrists who actually treated Andrea). With this approach, the defense would have had a clearer, more linear, story that Andrea was indeed insane. As it so happened, Dietz probably appeared better with his single theory in contrast to the defense's multiple theories concerning Andrea's mental state.

The defense also would have benefited from questioning Dietz more aggressively about the facts of Andrea's history of postpartum depression and psychosis. Such a "detailing to death"<sup>474</sup> tactic could have accomplished two goals: (1) it would have accentuated Dietz's lack of expertise in the area, and (2) it would have stressed the neurological and biological aspects of the disorders. The jury would perhaps more fully appreciate that insanity determinations are based on far more than just "common sense" or speculation. The jurors' own comments indicate that this kind of psychiatric evidence had little to no impact in their forty minutes of deliberation before deciding to convict Andrea.

## B. The Jurors' Comments

The jurors' explanations for their verdict suggest that they were heavily swayed by the prosecution's presentation of the case. In their view, Andrea's manner of killing her children seemed "premeditated and methodical."<sup>475</sup> They cited Andrea's videotaped confession and the photographs of her children, alive and dead, as "the most compelling evidence" of their unequivocal belief that Andrea knew right from wrong.<sup>476</sup> According to one juror, for example, because

472. See Grinfeld, *supra* note 140.

473. Dietz and Resnick have testified for the prosecution and the defense, respectively, in prior trials, which resulted in the convictions of Jeffrey Dahmer and Unabomber Ted Kaczynski. Oliver Burkeman, *Family Murder Trial Splits Texas: The Killing of Five Children by Their Mentally Ill Mother Highlights Controversial Death Penalty Laws in America*, *GUARDIAN* (London), Feb. 19, 2002, at 15.

474. For a discussion of the "detailing to death" tactic, see GREGORY M. MATOESIAN, *LAW AND THE LANGUAGE OF IDENTITY: DISCOURSE IN THE WILLIAM KENNEDY SMITH RAPE TRIAL*, at v. 6, 69, 102 (2001).

475. See Associated Press, *Yates Family Members Decry Husband*, Mar. 18, 2002, available at [http://www.courttv.com/trials/yates/031802\\_ap.html](http://www.courttv.com/trials/yates/031802_ap.html).

476. See *The Yates Trial Jury*, *HOUSTONCHRONICLE.COM*, Mar. 16, 2002, at <http://www.chron.com/cs/CDA/story.hts/special/drownings/1233919>; *Yates Family Members Decry Husband*, *supra* note 475. The jury consisted of eight women and four men. At least five of the women were married and held jobs, and four of those five had children. The three unmarried women were employed, and

Andrea called the police immediately after the killings and could converse with them and account for her behavior, “it seemed as if she was thinking pretty clearly.”<sup>477</sup> Another juror emphasized that Andrea “was able to describe what she did . . . I felt like she knew exactly what she was doing.”<sup>478</sup> These “objective” actions of Andrea’s are the kinds of factual evidence that Dietz stressed in his determination that Andrea was sane.

The jurors also appeared to take seriously the prosecution’s depiction of Andrea’s religiosity and her perception of her conduct as sinful. Indeed, religion was an important force throughout the trial in a number of different ways. For example, prosecutor Owmbly claimed to have prayed before deciding to seek the death penalty for Andrea,<sup>479</sup> and he expressed his firm belief that she was aware that she had sinned.<sup>480</sup> He also elicited testimony from one of the defense’s expert witnesses admitting that Andrea knew she had sinned.<sup>481</sup> Surely, Andrea’s own statements supported that view.<sup>482</sup>

On the surface at least, the jury seemed predisposed to embrace such religious characterizations. In a television interview with four of the jurors conducted shortly after the Yates verdict, the jurors’ comments indicated that they all shared some Christian convictions.<sup>483</sup> As the interviewer emphasized, “[i]n a case [the Yates jurors] found emotionally draining, they say prayer got them through.”<sup>484</sup> According to one juror, for example, all the jurors “held hands and prayed . . . [the] Lord’s prayer, most mornings” and they “did the same thing before and after the verdict.”<sup>485</sup> Another juror affirmed the prosecution’s sentiment that Andrea “knew it was wrong in the eyes of God.”<sup>486</sup> During the trial, there appeared to be little left for the defense to hold on to other than evidence of Andrea’s mental illness,<sup>487</sup> and the nature and severity of her illness did not come across adequately.

Dietz also accentuated sin and religion generally throughout his testimony, far more than the “facts” of Andrea’s mental history.<sup>488</sup> Of course, on the surface, Andrea’s explanations for why she killed were laced with religion. Yet, given the severity of her mental illness, the religious aspects of her delusions were symptoms of her disorder, not a substantive issue for Dietz to “debate” with her.

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two had children. All of the men were employed, at least three were married, and two had children. Three women and two men had some exposure to psychology, either through counseling or an educational degree. See *The Yates Trial Jury*, *supra*.

477. See *Yates Family Members Decry Husband*, *supra* note 475.

478. *Id.*

479. See Cassel, *supra* note 84.

480. See *Mother Faces Jury for Drowning Five Kids*, *supra* note 348.

481. See *Yates’ Mom: ‘She Was a Wonderful Mother,’* CNN.COM, Mar. 6, 2002, available at [http://www.courtstv.com/trials/yates/030602\\_cnn.html](http://www.courtstv.com/trials/yates/030602_cnn.html).

482. See *supra* notes 463-65 and accompanying text.

483. See Dawn Fratangelo, *The Jury Speaks: Jury Members Discuss Andrea Yates’ Trial*, *Dateline NBC* (NBC television broadcast, Mar. 17, 2002).

484. *Id.*

485. *Id.*

486. *Id.*

487. See *Third Day of Testimony to Begin in Trial of Texas Mom*, CNN.COM, Feb. 20, 2002, available at [http://www.courtstv.com/trials/yates/022002\\_cnn.html](http://www.courtstv.com/trials/yates/022002_cnn.html).

488. See generally App. 4.

Delusions and hallucinations about the devil are not uncommon among women with postpartum psychosis and those who end up killing their children.<sup>489</sup> In turn, all mental illnesses are contextually based, reflecting the culture and day-to-day circumstances of the mentally ill person.<sup>490</sup> In other words, mental disability is interlinked with other influences in a person's life, including the community where that person lives.

### C. Religion and Culture

Given Andrea and Rusty's intense interest in the Bible and the Woronieckis' lifestyle, it is understandable that such themes would provide the foundation for Andrea's delusional thoughts. While the Yateses were not affiliated with any church,<sup>491</sup> Rusty decided to hold the children's funeral close to their home at the Clear Lake Church of Christ,<sup>492</sup> which Rusty now regularly attends.<sup>493</sup> Over a two-century history, Churches of Christ have divided into eight primary branches,<sup>494</sup> now totaling nearly two million members worldwide.<sup>495</sup> The majority mainstream wing of the Churches of Christ is especially strong in the region of the United States spanning from Middle Tennessee to West Texas.<sup>496</sup> The tenets of this mainstream branch give some perspective on Rusty's current religious views and what he may have believed in the past.

Consistent with Rusty's prior distance from organized religion,<sup>497</sup> Churches of Christ purport to be nondenominational and therefore are not Catholic or Protestant.<sup>498</sup> Rather, followers of the Church simply call themselves "Christians."<sup>499</sup> Commonly, members contend "that they have restored the primitive church of the apostolic age and are therefore nothing more or less than the true,

489. See *supra* note 232.

490. For a specific example of how culture shapes insanity, see ROBERT L. WINZELER, *LATAH IN SOUTHEAST ASIA: THE ETHNOGRAPHY AND HISTORY OF A CULTURE-BOUND SYNDROME* (1995).

491. See Roche, *supra* note 1, at 47.

492. See SPENCER, *supra* note 1, at 68-75.

493. Carlton Stowers, *Tracks of His Tears*, DALLAS OBSERVER, Jan. 23-29, 2003, at 30.

494. RICHARD T. HUGHES, *REVIVING THE ANCIENT FAITH: THE STORY OF CHURCHES OF CHRIST IN AMERICA 1* (1996) (noting that these branches of the Churches of Christ include the Pre-millennial Churches of Christ, the Non-Class Churches of Christ, the One-Cup Churches of Christ, as well as the International (Boston) Churches of Christ).

495. Edwin S. Gaustad, *Churches of Christ in America*, in 2 *THE RELIGIOUS SITUATION: 1969*, at 1013, 1017 (Donald R. Cutler ed., 1969); see also ChurchZip Coverage, at <http://www.churchzip.com/statisticalsummary.htm> (last visited Feb. 24, 2003). ChurchZip purports to provide "the world's largest and most accurate on-line directory of Churches of Christ" and cites a daily total of membership in Churches of Christ. ChurchZip Coverage, *supra*. As of February 24, 2003, this membership totaled 1,848,728 people worldwide. *Id.*

496. HUGHES, *supra* note 494, at 1; see also ChurchZip Coverage, at <http://www.churchzip.com/uscastatisticalsummary/US> (last visited Feb. 24, 2003) (indicating that Tennessee and Texas still have the highest concentrations of Church of Christ members in the United States as of Feb. 24, 2003).

497. See *supra* notes 57-58, 291 and accompanying text.

498. Gaustad, *supra* note 495, at 1013-14. *But see* HUGHES, *supra* note 494, at 2 (noting that although the "Churches of Christ have passionately rejected the labels *sect* and *denomination* as pertinent to their own identity . . . their denial of these categories flies in the face of social reality, [hence] their story is one of deep irony and absorbing interest").

499. Gaustad, *supra* note 495, at 1013.

original church described in the New Testament.”<sup>500</sup> Indeed, Churches of Christ have essentially “denied that they had a defining history other than the Bible itself” and many members have no knowledge of the Church’s original founders.<sup>501</sup> “Biblical authority,” therefore, is paramount<sup>502</sup> and Church members defy “hierarchy or headquarters or national program.”<sup>503</sup> As a result, each congregation is an independent body<sup>504</sup> and “practices vary widely” among them.<sup>505</sup>

The Clear Lake Church of Christ has an extensive website,<sup>506</sup> which offers a range of lessons.<sup>507</sup> The Church also sponsors the White Stone Ministry, whose mission is in part to aid “those who do not know Christ” by introducing them to Jesus and the Bible’s scriptures.<sup>508</sup> In addition to posting specific scriptures, the White Stone Ministry offers a number of instructive articles, which appear to focus on “sexual sin”<sup>509</sup> and the hazards of pornography, particularly in comparison to a good marriage.<sup>510</sup>

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500. HUGHES, *supra* note 494, at 2. According to Richard Hughes, “arguably the most widely distributed tract ever published by Churches of Christ or anyone associated with that tradition” was entitled, “Neither Catholic, Protestant, Nor Jew.” *Id.* at 4. Published during the 1960s, the tract asserted the following:

[T]he church of Christ is neither Catholic, Protestant, nor Jewish. We are unique and different for we are endeavoring to go all the way back to the original New Testament church. Using the New Testament as our blueprint we have re-established in the twentieth century Christ’s church. It fits No modern label. It is not just another denomination.

*Id.* (citation omitted).

501. *Id.*

502. Edwin S. Gaustad, *Churches of Christ*, in 1 ENCYCLOPEDIA OF CHRISTIANITY 573 (Erwin Fahlbusch et al. eds., 1999). According to one author’s account of the Church of Christ, most members believe that the original manuscripts that now constitute the Bible “were divinely inspired, by which it means they are infallible and authoritative.” *What Is the Church of Christ?*, 1 BIBLICAL STUD. J. (Apr. 1, 1997), at <http://www.biblicalstudies.org/v001n03.html>.

503. Gaustad, *supra* note 502, at 573; see also *What Is the Church of Christ?*, *supra* note 502 (noting “that by the very nature of the organization of the church of Christ, it is not possible for this author, or anyone else, to speak officially for the churches of Christ throughout the world” although the author asserts that his “comments [describing the Church] express the basic beliefs and convictions of most members of the churches of Christ”).

504. Jack Harriman, *What’s Different About the Church of Christ?*, West-Ark Church of Christ Online Library, at <http://www.westarkchurchofchrist.org/library/topic1.htm> (last visited Feb. 24, 2003).

505. See ChurchZip Coverage, *supra* note 495.

506. Clear Lake Church of Christ, at <http://www.clearlakechurch.com> (last visited Mar. 25, 2003).

507. Clear Lake Church of Christ, The Truth Will Set You Free, at <http://www.clearlakechurch.com> (last visited Mar. 25, 2003). The lessons provided through the Clear Lake Church of Christ website cover a wide range, although a prevalent message is the notion that humans cannot “make it” without God. *Id.* According to the Church’s minister, Byron Fike, for example, human beings cannot “make it” without God and must be “dependent or broken” because “[b]eing broken is the first step of coming to know God.” *Id.* (Lesson 4—Dependence Upon God).

508. Clear Lake Church of Christ, White Stone Ministries Mission Statement, at <http://www.clearlakechurch.com> (last visited Mar. 25, 2003).

509. David K. Foster, *Sexual Sin & Bondage: What Does it Look Like to Be Healed? Part I*, White Stone Ministries, at <http://www.clearlakechurch.com> (last visited Mar. 25, 2003).

510. David E. Longacre, *Marriage and the Power of Porn*, White Stone Ministries, at <http://www.clearlakechurch.com> (last visited Mar. 25, 2003).

The importance of religion in the south and Harris County in particular should not be downplayed when analyzing the reasons for Andrea's conviction, especially since religious themes were highlighted by the prosecution. According to one legal scholar's analysis of the literature on "[t]he southern subculture of punitiveness,"<sup>511</sup> a key "facet of American Southern exceptionalism is the South's distinctive embrace of Protestant fundamentalism," which is why the South is commonly referred to as "the Bible belt."<sup>512</sup>

In turn, a substantial body of research shows a link between Southern fundamentalism and support of the death penalty.<sup>513</sup> While the precise explanation for this association is not clear, it is "real" nonetheless and exists along with other evidence of the South's disproportionate proclivity to violence.<sup>514</sup>

With respect to the Yates case specifically, it seems that the prosecution and Dietz were in religious sync with the jury, presuming the jurors were in any way representative of Harris County, the heart of the Bible belt.<sup>515</sup> While the role of the jury is to reflect community values, Dietz's "Bible thumping" may have merely reinforced what could have been the jury's own initial, moral, thesis about Andrea's mental state. The defense should have detailed Dietz to death to separate the religion from the "real" facts of the case. As it stands, religion appeared to dominate much of the testimony, and the medical aspects of postpartum psychosis and Andrea's history of mental illness took a substantially smaller role.

#### D. Andrea Yates's Competency

One of the most significant problems that the defense confronted was Andrea's resistance to assisting in her own case. From the moment she completed the killings, Andrea seemed intent upon seeking punishment for her actions.<sup>516</sup> This kind of thinking may have been a symptom of her particular mental illness—her suicidal and homicidal ideas—and it is not unusual.<sup>517</sup>

In an interview with the police who responded to her call immediately after the killings, for example, the only question Andrea asked was when she would be tried.<sup>518</sup> The next day, she told her prison psychiatrist, Melissa Ferguson, that she was guilty and deserved punishment.<sup>519</sup> Dr. Gerald Harris, the clinical psychologist who testified for the defense at Andrea's competency hearing, recalled that when he first spoke to Andrea shortly after the killings, she made troubling comments regarding Satan.<sup>520</sup> In arguing that Andrea was not yet competent to

511. Marian J. Borg, *The Southern Subculture of Punitiveness? Regional Variation in Support for Capital Punishment*, 34 J. RES. CRIME & DELINQ. 25, 25 (1997).

512. Steiker, *supra* note 9, at 124.

513. *Id.*; Professor to Discuss Death Penalty, *supra* note 180.

514. Steiker, *supra* note 9, at 124.

515. See *supra* notes 8-9, 511-12 and accompanying text.

516. See *supra* notes 11-20 and accompanying text.

517. Telephone interview with Shari Lusskin, M.D., *supra* note 279.

518. Associated Press, *Psychiatrist Testifies in Yates Trial*, Feb. 22, 2002, available at [http://www.courtstv.com/trials/yates/022202-defense\\_ap.html](http://www.courtstv.com/trials/yates/022202-defense_ap.html).

519. See *Yates' Fate Hinges on Doctors' Words*, *supra* note 7.

520. See Associated Press, *Mother Accused in Deaths of Five Children Not Yet Mentally Stable to Stand Trial*, Sept. 19, 2001, available at [http://www.courtstv.com/news/2001/0919/yates\\_ap.html](http://www.courtstv.com/news/2001/0919/yates_ap.html).

stand trial, Harris emphasized that people are not going to adequately defend themselves if they believe that their death will eliminate Satan.<sup>521</sup>

In his competency report, Harris also noted that even though Andrea was experiencing both auditory and visual hallucinations,<sup>522</sup> she claimed that she was “fine and has no mental problems.”<sup>523</sup> In turn, Andrea “admit[ted] only that she was depressed in the past and had some irrational thoughts”; yet, she “appear[ed] to believe” that her medication “helped the depression” but may also “have caused the psychotic symptoms.”<sup>524</sup> Likewise, Andrea “repeatedly express[ed] an aversion to taking any medication because of her ‘pride.’”<sup>525</sup> Harris found Andrea incompetent to stand trial, given that “[h]er denial of mental illness and reluctance to provide information about it prevents access to information that could be important to her defense.”<sup>526</sup> He further observed that “she is easily confused and manipulated and has a diminished emotional capacity, likely preventing her from presenting herself appropriately in court.”<sup>527</sup>

Dr. Steven Rubenzer, the state’s forensic psychologist, found Andrea competent to stand trial despite the fact that she denied her mental illness and

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521. *See id.*

522. *See Harris, supra* note 25. What is also clear from Harris’s competency report is Andrea’s improvement during the three periods in which he examined her. When he first met with her on June 25, 2001, for example, she was on suicide watch and had started treatment for antipsychotic medication. As Harris noted:

At that time she was exhibiting overt signs of psychosis and depression. She appeared to meet most of the criteria for catatonia. Motor movement was slow, her affect was flat, there was very little eye contact, she had poor short and long term memory, and her response time to questions was up to two minutes or more. She also expressed delusional thinking, such as talking directly to Satan, being involved in an elaborate plan to destroy Satan, and seeing satanic symbols in the walls. Her insight and judgment were extremely poor. She stated at this time that her thinking was clear.

*Id.* When Harris met with Andrea for the second time on June 29, 2001, her condition had not really improved. Despite continuing on Haldol and Zoloft, she again exhibited clear symptoms of psychosis and depression. Poor memory and responsiveness, flat affect and delusional thinking were present. By August 31, 2001, Andrea had “appeared, on the surface, to have significantly improved functioning,” although she still had definite problems:

She was oriented to time and place and interacted more appropriately. Affect was blunted but not flat, made some eye contact, and response delay was decreased. However, she still had staring spells, frequently needed questions or instructions repeated, and exhibited poor insight and judgment. Her memory also continues to be impaired and abstract thinking or reasoning is poor.

Despite denial of any hallucinations or delusions, she clearly continues to have some degree of belief in her grandiose and paranoid ideation. When talking about such things as cameras watching her every move as a mother, or messages being sent to her through the television, she easily slips into language describing them as credible or true and becomes emotionally agitated. Asked if there were video cameras monitoring her in the past, she stares off and slowly replies, “maybe.”

*Id.*

523. *Harris, supra* note 25.

524. *Id.*

525. *Id.*

526. *Id.*

527. *Id.*

downplayed her depression.<sup>528</sup> When Rubenzer asked Andrea about her use of the insanity defense, Andrea “stated she does not believe she is mentally ill and *should* be punished for her actions.”<sup>529</sup> This response supported her attorneys’ claim that “she has consistently expressed the desire to plead guilty” and “has expressed reluctance to use an insanity plea.”<sup>530</sup> In addition, Rubenzer reported that Andrea evidenced feelings of “depression, social isolation, suspiciousness of other people” as well as a “feeling that her thoughts are blocked, or taken away, or can be heard by other people.”<sup>531</sup> Andrea also stated that “she has heard voices that others cannot hear in the past.”<sup>532</sup> However, while Rubenzer acknowledged that Andrea’s desire for punishment could hinder her ability to assist in her own defense,<sup>533</sup> this factor did not preclude his determination that she was competent to stand trial.

The transient nature of Andrea’s postpartum psychosis contributed to the defense’s hurdles because she was being treated and her mental state therefore improved. Ferguson observed that Andrea continued to show signs of psychosis for a full month after the drownings, but by early August the psychosis had lifted.<sup>534</sup> Legally, the fact that Andrea no longer suffered from psychosis at the time of trial should not have posed a problem. The Texas insanity statute clearly states that defendants need only have lacked knowledge as to the wrongfulness of their actions “at the time of the conduct charged.”<sup>535</sup> Nonetheless, jurors may have been skeptical of a mental illness that allegedly existed during the commission of the crime, but seemed to have disappeared by the time of trial.<sup>536</sup>

The defense introduced psychiatric testimony and a vast array of medical records to establish Andrea’s history of mental illness and post-arrest psychosis.<sup>537</sup> But the only person who could genuinely testify to Andrea’s state of mind at the essential moment, the moment of the killings, was Andrea herself.<sup>538</sup> In an interview with Rubenzer, Andrea claimed that she thought her actions were

528. See Steven J. Rubenzer, Competency Evaluation, Aug. 5, 2001 (for Andrea Pia Yates, case #88025) (on file with author).

529. As Dr. Rubenzer reports, on August 2, 2001, Andrea Yates “stated she does not believe that she is mentally ill, a position she has also reported to her past treating psychiatrist, Dr. Ferguson.” *Id.* at 3. Andrea also “minimized the degree of her depression, which those around her have often described as severe.” *Id.*

530. *Id.* at 5.

531. *Id.* at 3-4.

532. *Id.* at 4.

533. *Id.* at 6 (“She has stated she wants to be punished and could fail to assist her attorney develop her defense because of this desire.”).

534. See Associated Press, *Doctor: Yates Was in Psychotic Fog*, Mar. 6, 2002, available at [http://www.courtvtv.com/trials/yates/030602\\_ap.html](http://www.courtvtv.com/trials/yates/030602_ap.html).

535. TEX. PENAL CODE ANN. § 8.01 (Vernon 2002).

536. See Liu, *supra* note 1, at 362 (noting that the “ephemeral nature” of postpartum psychosis “is particularly problematic in that it contradicts the stereotypical notion of a severe mental illness as a debilitating disorder that affects the defendant both during the commission of the act and at the time of trial, although this illness may be abated presently with the aid of medication”).

537. See generally App. 1.

538. See *Texas Mom Drowns Kids*, COURTTV.COM, Feb. 28, 2002, available at [http://www.courtvtv.com/talk/chat\\_transcripts/2002/0227yates-deltito.html](http://www.courtvtv.com/talk/chat_transcripts/2002/0227yates-deltito.html) (quoting Dr. Joseph Deltito, professor of psychiatry at New York Medical College: “There is no way to prove [that someone is experiencing a psychotic episode right at the time] other than observation and report on the part of the person.”).

right during the time she drowned her children, and only “realized they were legally wrong after the fact when she called the police.”<sup>539</sup> Given that Andrea’s knowledge of right and wrong was at the crux of her entire case, it would have been helpful if Andrea had elaborated upon this statement for the jury’s benefit. Rubenzer testified that as Andrea’s mental health improved, she would become better able to appreciate her actions;<sup>540</sup> one can only wonder whether part of Andrea’s reluctance to assist in her own defense was due to her growing guilt and horror at the enormity of what she had done.

#### E. Final Comments

The Yates case concerned a multitude of legal and social issues; this Article focused on just a few. There is no in-depth discussion, for example, of potential solutions for the problems that the case revealed although, of course, improvements are clearly needed. While it is beyond the bounds of this Article to consider this topic in any more detail, a few points merit brief mention.

A critical point pertains to the narrow nature of the Texas insanity standard. According to Dietz, Andrea most likely would not have been convicted if the insanity standard had been more lenient,<sup>541</sup> such as the ALI test.<sup>542</sup> Indeed, in a postpartum depression case that followed Andrea’s conviction, Dietz successfully testified as an expert for the *defense* in an ALI test state (Illinois).<sup>543</sup> The mother, a pediatrician who killed one of her sons with a knife and severely assaulted the other son, was found not guilty by reason of insanity based largely, it seems, on Dietz’s testimony.<sup>544</sup>

Most states, like Texas, follow a *M’Naghten*-type standard, not an ALI test.<sup>545</sup> Dietz has suggested that one possible solution to any injustice that the Yates case may have created is to adopt the approach applied in Great Britain.<sup>546</sup> Under the British Infanticide Act of 1922<sup>547</sup> which was amended in 1938,<sup>548</sup> a mother who

539. See *The Andrea Yates Case*, COURT.TV.COM, Mar. 15, 2002, available at [http://www.court.tv.com/talk/chat\\_transcripts/2002/0315yates-crier.html](http://www.court.tv.com/talk/chat_transcripts/2002/0315yates-crier.html).

540. See *Mother Accused in Deaths of Five Children Not Yet Mentally Stable to Stand Trial*, *supra* note 520.

541. See Toufexis, *supra* note 150.

542. See MODEL PENAL CODE 1985 § 4.01(1), *supra* note 97, at 163.

543. Karen Mellen & Bonnie Miller Rubin, *Mom Found Insane, Not Guilty in Her Son’s Killing*, CHI. TRIB., Dec. 4, 2002, at 1.

544. *Id.*

545. See Farabee & Searly, *supra* note 130, at 673.

546. See Toufexis, *supra* note 150.

547. INFANTICIDE ACT OF 1922, Ch. 18, repealed (Eng). For a history of the development of the British Infanticide Act, see Karen Lewicki, *Can You Forgive Her? Legal Ambivalence Toward Infanticide*, 8 S. CAL. INTERDISC. L.J. 683 (1999).

548. INFANTICIDE ACT OF 1938, c. 36, § 1 (Eng.). The Act reads as follows:

§ 1 Offence of infanticide.

(1) Where a woman by any wilful act or omission causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for this Act the offence would have amounted to murder, she shall be guilty of felony, to wit of infanti-

evidences a postpartum disorder and kills her infant during the first year of its life can only be convicted of manslaughter, and not murder. Postpartum disorders are recognized as a form of diminished capacity that reduces murder to manslaughter, thereby providing a trial court some range in determining sentencing (anywhere from life imprisonment to a psychiatric sentence).<sup>549</sup> Of course, Great Britain does not have the death penalty,<sup>550</sup> which was a key element in the Yates case irrespective of the insanity defense.<sup>551</sup>

Other kinds of reforms have also been suggested for incorporating postpartum disorders as evidence for a defense or mitigation.<sup>552</sup> Yet, the British Infanticide Act is an established illustration of how infanticide can be treated as a separate category of crime when there are medical problems associated with the killing. As it stands, American law has neither a separate criminal category nor

cide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.

(2) Where upon the trial of a woman for the murder of her child, being a child under the age of twelve months, the jury are of opinion that she by any wilful act or omission caused its death, but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then the jury may, notwithstanding that the circumstances were such that but for the provisions of this Act they might have returned a verdict of murder, return in lieu thereof a verdict of infanticide.

(3) Nothing in this Act shall affect the power of the jury upon an indictment for the murder of a child to return a verdict of manslaughter, or a verdict of guilty but insane[.]

*Id.*

549. *Id.*; see also Velma Dobson & Bruce Sales, *The Science of Infanticide and Mental Illness*, 6 PSYCHOL. PUB. POL'Y & L. 1098, 1101 (2000) (reviewing the range of legal outcomes available under the British Infanticide Act of 1938). Presently, none of the states has a statute similar to the British Infanticide Act. Macfarlane, *supra* note 232, at 138. The differences between the ways the United States and Great Britain treat mothers who commit infanticide and then claim a defense of postpartum depression were strikingly illustrated by the case of Caroline Beale. See Mark Jackson, *Infanticide: Historical Perspectives*, 146 NEW L.J. 416, 416 (Mar. 22, 1996) (stating that “one of the most controversial aspects of the case of Caroline Beale has been the explicit comparison between English and American law”). Beale was English but killed her newborn daughter in New York on September 21, 1994. The terms of Beale’s plea bargain mandated that Beale plead guilty to manslaughter and receive a sentence of eight months imprisonment (which amounted to time served), five years’ probation, and at least one year of psychiatric treatment. Beale’s trial drew international attention to postpartum depression as a legal issue since the outcome of her case was so much harsher under American rather than British law. See generally DUNCAN CAMPBELL, A STRANGER AND AFRAID: THE STORY OF CAROLINE BEALE (1997). Accordingly, the British press emphasized that Andrea Yates would have received a substantially more lenient outcome in England than in the United States. Gumbel, *supra* note 77, at 1 (“In Britain, by contrast, the chances are that Yates would have been acquitted on the grounds of temporary insanity—if she had been brought to trial at all.”). *But see* Dobson & Sales, *supra*, at 1100 (contending “that the proper criminal legal response to infanticide lies somewhere between the inappropriately broad British approach and the myopic American position that effectively ignores the subclass of women who deserve closer scrutiny for the relation of their serious mental illness to the criminal defenses of insanity and diminished capacity”).

550. Murder (Abolition of Death Penalty) Act 1965, c. 71, Enactment Clause 1 (Eng.); Human Rights Act 1998, c. 42, sched. 1, pt. III (Eng.) (“A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war.”).

551. See *supra* note 12.

552. Liu, *supra* note 1, at 388-98.

any legislative recognition of postpartum psychosis as a mitigating factor, although the disorder can be used as a defense in criminal cases.<sup>553</sup>

Notably, one key issue potentially on appeal in the Yates case could have had a major impact on the outcome apart from any kind of new reform proposal involving postpartum disorders. Under Texas law, Andrea's attorneys were unable to explain to the jury the consequences of Andrea being found "not guilty by reason of insanity."<sup>554</sup> The state has a provision requiring that a defendant not be automatically released from the trial court's jurisdiction when acquitted under the insanity defense.<sup>555</sup> In fact, the trial court has the "continuing jurisdiction to impose involuntary commitment for a defendant acquitted by reason of insanity" as well as "maintain jurisdiction to involuntarily commit an acquitted defendant to the state mental hospital for the rest of the defendant's natural life."<sup>556</sup> Because of the stringent nature of the court's control over a defendant determined to be insane, it is conceivable that the Yates jury would have been influenced by knowing that Andrea could not possibly have "walked free" if they had accepted her insanity plea.<sup>557</sup> It also seems likely that Dietz's expert testimony would not have had the same effect if Texas did not have such a harsh insanity provision.

Debates abound on how psychiatric experts like Dietz should be treated in cases involving insanity determinations. Historically, the criminal justice system encouraged experts to become involved in insanity cases because it was believed that doctors and lawyers working together would produce a higher form of justice for defendants.<sup>558</sup> By the mid 1800's, however, conflict between the two professions was rampant and the strategy of using experts was both expensive and commonly unproductive.<sup>559</sup> As this Article's analysis of Dietz's testimony indicates, these problems remain today. Some legal scholars have recommended that judges appoint experts approved by both sides to avoid the potential biases that

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553. See Denno, *supra* note 43, at 138-42; Michelle Oberman, *Mothers Who Kill: Coming to Terms with Modern American Infanticide*, 34 AM. CRIM. L. REV. 1, 1-109 (1996).

554. TEXAS CODE CRIM. PROC. art. 46.03 § 1(e) (Vernon 2002).

555. WHATLEY, *supra* note 84, at 5 (comparing the Texas death penalty standard to other state standards); see also *State v. Yates*, Motion to Declare Article 46.03, Section 1(e) of the Texas Code of Criminal Procedure Unconstitutional (Dist. Ct., Harris County, Tex.) (Oct. 30, 2001) (declaring article 46.03, section 1(e) of the Texas Code of Criminal Procedure unconstitutional because "[t]he Statute precludes a juror in a case in which the insanity defense is raised from knowing that the trial court continues to maintain jurisdiction over the defendant after a finding of not guilty by reason of insanity").

556. TEXAS CODE CRIM. PROC. art. 46.03 (Vernon 2002).

557. In a Dateline NBC interview with four of the jurors, one juror said "it wouldn't have changed [her] opinion at all" to have known that Andrea would not have been set free after an acquittal because the juror "assumed she would go to an institution all along" in such a circumstance. Fratangelo, *supra* note 483. Another juror claimed that he thought "there needs to be a punishment for this crime" and he was "not sure" if institutionalization in a mental health facility "would have been punishment enough" in his opinion. *Id.* However, these comments reflect the views of only two of the jurors and the second juror was ambivalent about how he would have responded. *Id.* Of course, it is also difficult to assess how jurors would really have been affected because their opinions reflect hindsight after they have just convicted someone for life imprisonment.

558. See generally MOHR, *supra* note 41, at 3-139.

559. *Id.* at 140-224.

arise because of the experts' partisanship.<sup>560</sup> Those skeptical of the contention that any expert can be unbiased, however, have other suggestions. For example, the criminal justice system could (1) require that the experts be hired by one party but have their role limited or (2) mandate that the experts serve only as a consultant to an attorney.<sup>561</sup> While other kinds of reforms have been suggested,<sup>562</sup> the law remains quite static in terms of any changes, despite the obvious difficulties.

The issue of bias among experts perhaps becomes especially provocative in cases involving gender specific criminal defenses<sup>563</sup> as well as gender differences in the context of the death penalty.<sup>564</sup> As legal commentators have insightfully noted, the Yates case evokes sensitive subjects that arise when mothers are charged for killing their children.<sup>565</sup> Dietz's testimony specifically targeted Andrea's role as "mother" both before and after she killed her children;<sup>566</sup> it is no leap to suggest this issue was significant in her conviction.

This overview provides some inkling of the broad range of factors bearing on the Andrea Yates case. For this reason alone, it appears that the case is one of the most significant and complex insanity stories in the past few decades.

#### CONCLUSION

This Article examined the different stories behind the Andrea Yates death penalty case—the defense's, the prosecution's, and the explanation that Andrea herself provided. The jury did not accept the defense's story that Andrea was insane and thought she was under Satan's influence at the time she drowned her five children in the bathtub. Rather, the jury convicted Andrea and sentenced her to life in prison based on the prosecution's story that Andrea was sane and acting intentionally when she killed her children, even though she was mentally ill. Andrea herself fueled the prosecution's account and, of course, to her detriment. She felt that she had sinned and that she deserved to die.

The most persuasive storyteller of them all, however, was Park Dietz, the prosecution's star expert witness. His singular, consistent narrative of Andrea's sanity contrasted sharply with the multiple, inconsistent portrayals provided by defense experts. Ironically, the severity of Andrea's mental illness appeared in some sense to be a negative force in her case. It constituted the underpinnings of her wish to be punished (even executed) and it also produced the numbers of doctors who became involved in her life and, consequently, her trial. All of these factors contributed to a psychiatrically muddled snapshot of who Andrea was.

560. Ciccone, *Expert Testimony*, *supra* note 42, at 796.

561. *Id.*; see also Ciccone, *Murder*, *supra* note 42, at 608.

562. See generally Perrin, *supra* note 40 (providing an overview of the role of expert witnesses in the criminal justice system and suggesting reforms).

563. Denno, *supra* note 43, at 138-42.

564. For an excellent overview of gender differences in the application of the death penalty, see Elizabeth Rapaport, *Equality of the Damned: The Execution of Women on the Cusp of the 21st Century*, 26 OHIO N.U. L. REV. 581 (2000); Victor Streib, *Gendering the Death Penalty: Countering Sex Bias in a Masculine Sanctuary*, 63 OHIO ST. L.J. 433 (2002); see also Howarth, *supra* note 1, at 218-19 (noting the significance of gender in comparing the Karla Faye Tucker case with the Andrea Yates case).

565. See Albiston et al., *supra* note 1, at 14-15; Bangs, *supra* note 1, at 93-108.

566. See generally App. 4.

There were other apparently key influences in Andrea's case—the punitive nature of Harris County and Andrea's death qualified jury, for example, as well as the atypically strict and ambiguous structure of the Texas insanity standard. The power of Dietz's testimony, however, was the primary focus of the discussion. Despite his reputation for emphasizing "facts" and his ability to offer a much simpler landscape of Andrea's mental state, Dietz's level of speculation was troubling. There was little, if any, empirical basis for his conclusions, and his sweeping conjecture spotlighted his lack of expertise in postpartum depression and postpartum psychosis.

Dietz's version of "Who is Andrea Yates?" was convincing to the jury, although it is difficult to discern how much reality was behind it. At the same time, legal scholars and policy makers have yet to offer substantial improvements on the way expert testimony is treated in court. The Park Dietzes of the expert testimony world are not simply invited to be part of the criminal justice system, they are avidly embraced. It is not up to them to change a system in which they are providing what is viewed to be a necessary service. They should, however, comport with the ethical requirements of their profession. And legal procedures should also control what kinds of stories can be told.

This Article's analysis of the Andrea Yates case makes no claim to have the "right" story about Andrea, whatever that may be. Based on the limited amount of information yet available on the case, it had other goals. For example, an examination of the Yates trial shows "how unsettled and unsettling narratives from life are" and how many different views of a person can arise depending on who holds the lens.<sup>567</sup> As one scholar emphasizes, "it is not just who and what we are that we want to get straight but who and what we might have been, given the constraints that memory and culture impose on us."<sup>568</sup> It seems that the legal system did not "get straight" the Andrea Yates story during the trial. Maybe it will get it right when the case is appealed.

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567. BRUNER, *supra* note 33, at 14.

568. *Id.*